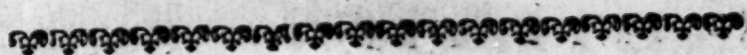


THE
ROMAN
Military Punishments.



JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

JOHN W. H. H. H.

THE
ROMAN
Military Punishments.

BY
JOHN BEAVER, Esq;

Terrent nisi timent. Lips. de M. R.



LONDON,
FROM THE HAPPY REVOLUTION
ANNO XXXVII.

* 56-198

THE
ROMAN
Military Punishments
BY
JOHN REANE, Esq.

Author of "The Roman Law of Property"

LONDON

FROM THE PRESS OF THE
AND KXVII



TO THE
READER.



YOU have here the First express Treatise of the Roman Military Punishments, that, perhaps, you ever saw, or heard of, in the *English* Tongue. A Subject, it must be confest, of more Curiosity than Use; yet such as hath often employ'd the Pens of several Great and Learned Men, to whom, I freely own my self indebted for the

the Thought of the undertaking, as well as for many Materials towards accomplishing this Design : And I hope, it will be no Disparagement to the Work, since that would be altogether as unreasonable, as to lessen the Merit of an *Architect*, because he is not the *Inventer* of the *Timber* and *Stone* out of which he is to raise his Building ; there will be something due to him for his Model and Contrivance, and for his Pains and Application, in finding out, and bringing together proper Materials for the Structure.

The Nature of the Employment in which I have the Honour to serve His Majesty, necessarily engag'd me to be acquainted with this Subject. And tho' the

To the Reader. iii

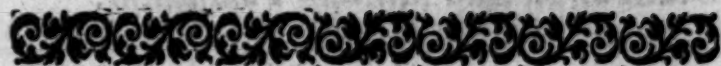
the *Modern Punishments* used in Armies fell more immediately under my Consideration, after I had finish'd my Enquiries and Observations upon them, the Work seem'd imperfect, till I had look'd back into *Antiquity*, and seen what Punishments were in use in those remote Times, when *Military Discipline* is thought to have been in the highest Degree of Perfection. This regularly divided my Book into Two Parts; One treating of the *Roman*, the other of the *Modern Military Punishments*. The First I now send into the World, as a Man going into the Water, dips his Foot to feel what Reception he is like to meet with; by that Rule, resolving, either to publish the Second Part, or sit down contented with the

private

private Satisfaction of having by my
Studies, rendered my self more able,
worthily to discharge the Duties of
my Office.

divided my Task into Two Parts;
One treating of the Reason, the other
of the Affection. The former I have
The First I now send into the World,
The Man going into the World, who
the Reader will find that I cannot pass
the to mind with a better Light, and
any other, and publish the Second
Part, or at least, I am content with the

THE



THE CONTENTS.

CHAP. I.

Roman Military Punishments either common or proper. Reason for the Severity of Military Discipline. Verberatio, or Beating, the principal Punishment used in the Roman Armies ; distinguished into Fustigatio or Fustuarium, and Castigatio. What Persons were subject to it. Difference between the Fustuarium and Fustium Admonitio. Lyndenbrogius mistaken. The Fustuarium never inflicted but by the Common Executioner.

[a]

How

The Contents.

How executed. Absurdity of Liplius. Swords made use of in the Fustuarium. Stoning to Death no Roman Military Punishment.

CHAP. II.

Crimes punished by the Fustuarium. Property well secured in the Roman Camps. Reason why their Soldiers were so addicted to Unnatural Lusts. Women not suffered to follow the Camp, nor Soldiers to marry. Variety of Opinions on this Head. Liplius's Construction of the Word Scortum disapproved.

CHAP. III.

Crimes punished by the Fustuarium, according to Polybius. Liplius mistaken. Several other Offences punished the same way.

CHAP. IV.

Decimation, why so called. Centesimation used by Macrinus. The manner of Decimating. Barley given instead of Wheat, to those that escaped the Fatal Lot. The Reason and Design

The Contents.

Design of this Punishment explained.

CHAP. V.

Beheading with the Ax or Sword. The manner thereof. Lipsius's Assertion, that the Use of the Sword was unknown in the time of the Republick, groundless. The Office of Execution, to whom committed. Lipsius mistaken in making the Tribunes Common Executioners.

CHAP. VI.

Throwing headlong from a Rock or Precipice. Tarpeian Rock the Place of Execution at Rome. Conjectures concerning the Disuse of this Punishment.

CHAP. VII.

Macer explained. Roman Soldiers not liable to servile Punishments. Deserters and Fugitives treated and punished as Enemies. Thrown to Wild Beasts. The Cross a Military Punishment, disused by Order of Constantine. The Furca introduced. Different kinds of it. Deserters burnt alive. [a 2] CHAP.

The Contents.

CHAP. VIII.

Instances of Cruelty in some of the Emperors not to be accounted Military Punishments.

CHAP. IX.

Slavery. Ungrateful Persons reduced to slavery. Soldiers sold for Slaves. Cowards, and such as disabled themselves by cutting off their Thumbs, sold for Slaves. Original of the Word Poltron.

CHAP. X

Banishment defined. Different kinds of it. Used as a Punishment for Soldiers that misbehaved themselves. More frequent in the Sea-service.

CHAP. XI.

Breaking and Cutting off Legs and Arms. Variety of Opinions concerning the place of Execution in the Camp.

CHAP.

The Contents.

C H A P. XII.

Letting of Blood a Roman Military Punishment, accounted for several ways.

C H A P. XIII.

Difference between the Punishment called Fustigatio or Fustuarium, and Fustium Admonitio. Of the Stick or Switch used in Correcting. The power of Correcting belonged to the Centurions only.

C H A P. XIV.

Punishments of Infamy and Disgrace. Several Ways of Dismission used in the Roman Armies. Officers of all Degrees subject to be dismiss'd. Exauctoratio. Different significations of it.

C H A P. XV.

Standing barefoot before the General's Tent. Digging in the Trenches. Cutting of Hay. Standing at the Head-Quarters with long Poles in their Hands, or Turfs upon their Heads.

[a 3]

CHAP.

The Contents.

CHAP. XVI.

Encamping without the Intrenchment of the Camp. Garrisoning of Towns. Marching with the Baggage among the Captives. Degradation, *several kinds thereof.* Breaking, or taking away the Spear.

CHAP. XVII.

Roman Soldiers served long without Pay. Proportion of every Mans Allowance. Pay stoppt wholly, or in part, by way of punishment. Allowance of Corn and other Provisions, besides Money. Barley given to Offenders instead of Wheat. Difference between Suspendio Stipendii and Poena Pecuniaria. Refusal of Burial. Pugillarium Traditio, Notatio, &c. improperly called Military Punishments by Stewechius and Hugo.

ERRATA.

ERRATA

- P**AGE 44. in Note, read *Macrinus*, p. 46, line 18, *the Liburni*. p. 47. in Notes, r. *Castrametatione*. p. 57.
 l. 7. r. *Determination*. p. 72. l. 2. For *thence* read *thence*. p.
 74. l. 1. dele *their*. p. 107. l. 8. r. *infuse*. p. 119. in Notes,
 l. 1. for *qui* r. *quis*. p. 127. in Notes, r. *Novel* 116. p. 144.
 l. 13. r. *Oracillus*. p. 145. in Note 4, r. *initio*. p. 150. l.
 14. r. *that Code*.

AUTHORS quoted in this Book.

A lexander ab Alexandro.	Lucanus.
Amm. Marcellinus.	Lyndenbrogius
Appianus.	Montfaulcon.
Budeus.	Menage.
Casaubonus,	Muretus.
Choulius.	Novel. Justinian.
Cicero.	Perizonius.
Codex Theodosianus.	Petronius.
Cod. Justinian.	Plutarchus.
Cotteræus.	Plautus.
Cujacius.	Plinii Nat. Hist.
Cuperus.	Propertius.
Digest. Jur. Civil.	Puffendorf.
Dionysius Halicarnassæus.	Rioquius.
Eutropius.	Savill, Sir Henry.
Faber Semestrium.	Salmasius.
Festus.	Seneca.
Florus.	Sigonius.
Frontinus.	Sichtermannus.
Gellius.	Suidas.
Gothofredus.	Suetonius.
Grævius.	Scbelius.
Hesiodus.	Schefferus.
Herodianus.	Spartianus.
Hirtius.	Stewechius.
Hubertus.	Tacitus.
Hugo.	Turner, Sir Charles.
Instit. Juris Civilis.	Turnebus.
Josephus.	Valerius Maximus.
Isidorus.	Valtrinus.
Julius Capitolinus.	Varro.
Justinus.	Vegetius.
Juvenalis.	Virgilius.
Lampridius.	Voet.
Lipsius.	Vopiscus.
Livius.	Xenophon.



CHAP. I.



A S Military Crimes are either * *common* to all Men, or *proper* to such as embrace that Profession; so are Military Punishments. Not that the Peasant and Soldier falling into the

* Militum delicta five admissa, aut propria sunt, aut cum cæteris communia, unde & persecutio aut propria aut communis est. Proprium militare est delictum, quod quis uti Miles admittit. *Digest. lib. 49. Tit. 16. De Re Militari, Leg. 2.*

B

same

2 Of the Roman

same Crime suffer alike : For the Soldier is generally corrected * with greater Rigour and Severity ; as well because he is under a double Tie of Duty to the Government, whose Bread he eats, and in whose Defence he has solemnly engag'd, as that by the least Omission or Mistake, he may bring the whole Army, and consequently the Government into Danger of utter Ruin. † There is no Pardon, says *Vegetius*, for a Neglect, where the Safety of the State is in question. To which may be added, as another Reason for the Se-

* Rigidius autem Milites quam alii plerumque puniuntur, tum quod arctiori vinculo ad obedientiam illi sunt obligari, qui publicis aluntur stipendiis, tum quod illis ferocior ut plurimum natura. Vid. *Johannis Voet. lib. fing. De Jure Militari, cap. 4. §. 5.*

† Siquidem nulla fit negligentiae venia, ubi de salute certatur. *Veget. lib. 3. cap. 5.*

Military Punishments. 3

verity of Military Discipline, the common, and, I doubt, too true Observation, * that Soldiers are apt to assume a greater Liberty of Offending than others; as if entering into the Army let them loose from all Bonds of Human Society.

The *Roman* Military Punishments were either prescrib'd by express Laws; or Arbitrary, and depended entirely upon the Pleasure of the General, or Person that commanded the Army.

Among these, some were *Capital*, and reach'd either the † *Natural* or *Civil* Life of the Offender; others *not Capital*, as tending only to his *Reformation*.

* *Turner's Pallas Armata*, Book 2. Chap. 24.

† *Intereunt autem homines vel maxima vel media, capitis diminutione, aut morte. Digest. lib. 17. Tit. 2. Pro Socio. Leg. 63. §. ult.*

4 Of the Roman

Of Capital Military Punishments, the Chief was *Verberatio*, *Beating*. This was of Two Kinds; One call'd *Fustigatio*, the Other *Castigatio*; the difference between them consisting in this, that the first was ever inflicted with *Sticks* and *Cudgels*, and generally ended in an ignominious Death; the latter, with *Rods* or *Scourges*, being a Punishment of Pain and Infamy, but never extended to *Life* or *Limb*: Of which, more in another Place.

The *Fustigatio*, or, as it is by some call'd *Fustuarium*, was peculiar to *Free-men, as the *Flagra* and *Flagella* were to Slaves; and therefore the Roman Poets and Historians call them *Servilia*.

* Non omnes fustibus cædi solent, sed hi duntaxat, qui Liberi sunt. Digest. lib. 48. Tit. 19. De Pænis. Leg. 28. §. 2.

Ex quibus causis Liber fustibus cæditur, ex his Servus flagellis cædi. Eodem, Leg. 10.
Justin. 1. 5. Petron. p. 88.

Military Punishments. 5

Verbera, Serviles Poena; And Juvenal uses this Expression, *Ad flagra deducere*, to signifie the bringing a Man to the Condition of a Slave. It is therefore difficult to assign a Reason, why several Learned Men, particularly † Gothofredus and † Stewechius, have, upon the Authority of * Suidas and Eutropius, ascribed the Introduction of the *Fustuarium* among the Romans to Tarquin the Proud, especially since the Lexicographer in enumerating the Punishments of which Tarquin was the Author, makes no mention of the *Fustes*, but only ^{per} *Flagella*; which was so different a Punishment from the *Fustuarium*, that it was never inflicted upon Freemen; unless we can suppose they

† *Ad Leg. 7. Digest. de Pœnis.* † *Ad Veget. lib. 1. cap. 26.*

* *Vide Suidam in voce Eitri, &c. Juven. Sat. 10. V. 109.*
 ‡ *Eutropium, lib. 11.*

6 Of the Roman

did not perfectly understand the Greek Word, or knew not how to distinguish between the *Fustes* and *Flagella*, in the Punishment of the *Fustuarium*. Besides, there is not one Word of the *Fustes*, or of *Tarquin's* introducing them, in the Place cited out of *Eutropius*. They might, no doubt, have produc'd an Author more to their purpose: For * *Isidorus* says, besides *Goals*, *Racks*, working in the *Mines*, and *Banishment*, *Tarquin* invented the Punishment of the *Fustes*, he means, amongst the *Romans*; for, no question, the Punishing with *Clubs* and *Staves* was long before practis'd by other Nations, who made use of them in War before the Art of working Iron was known; and hence, even after Iron became common, *Clubs* and *Staves* conti-

* *Lib. 5. c. 27.*

Military Punishments. 7

nu'd to be used in certain Punishments.

They likewise made a Distinction between the *Fustigatio* or *Fustuarium*, and * *Fustium admonitio*; the first being proper to Soldiers, and, as is before observed, *Capital*; the latter a *Corporal* Punishment common to Soldier and Peasant, and inflicted only to warn them from committing the same Fault again: From whence it was called *ἡ ἐξ ὧν ἡ ἀντιμνηστικὴ* *Animadversio*; whereas such as underwent the *Fustuarium*, were generally beaten to death; and tho sometimes it hapned they escap'd with Life out of the Camp, yet it was of little Advantage to them, the † Laws

* *Veluti fustium admonitio. Digest. lib. 48. Tit. 19. De Panis, Leg. 7.*

† *Ac si qui evasisent, nec siquidem servari poterant, quippe, quibus neque in Patriam redire liceret, neque à propinquis domum recipi possent. Polyb. lib. 6. cap. 35.*

forbidding

8 *Of the Roman*

forbidding their Return home, or their Friends or Relations to receive or assist them ; † so that it ended, at the best, in a kind of perpetual Banishment. It is therefore surprizing, that * *Lyndenbrogius* should compare the *Fustigatio* of the Antients to our running the † *Gat-loupe* ; since in his Description of the *Fustuarium*, he says, Every one in the Camp, what with Staves, Swords or Stones, help'd to dispatch the miserable Offender : Which is known to be quite otherwise in our Modern Punishment.

‡ Quamobrem qui semel in eam calamitatem inciderunt, planissime pereunt. *Polyb. loc. cit.*

* *Lyndenbrogius ad Ammianum, Lib. 29. cap. 5. Edit. Gronov. p. 623. Durch die Spiesse laufen.*

† From *Gas* or *Cat*, which signifies a *Street* or *Way*, and *Laufen* or *Loupen* to *Run*.

levior,

Military Punishments. 9

It is also apparent from its ending in Death, that not *this*, but the *former* is that Species of the *Fustigatio*, which by the Learned is said to be *Flagellatio* *levior*, lighter than *Whipping*. On the other hand, *Whipping* was far more grievous than their *Admonitio*, as being inflicted on the bare Back of the Offender : Whence † *Juvenal*,

----- *Rubet ille flagello.*

Whereas such as were beaten with the *Fustes* for *Correction* or *Amendment*, had generally their Cloaths on, tho' sometimes they were stripp'd * *naked* ; and if the Fault was of a nature that deserv'd it, they were mark'd with † *Infamy*.

† *Sat. 6. V. 48.*

* *Vestimentis quoque detractis. Gell. lib. 10. cap. 3.*

L. 22. Dig. De his qui notantur infamia.

† *Ictus fustium infamiam non importat, sed Causa, propter quam id pati meruit, si ea fuit quæ infamiam damnato irrogat. Dig. lib. 3. Tit. De his qui notantur infamia, Leg. 22.*

10 Of the Roman

And it is to be observ'd, that the *Fustuarium* was never given by the hands of the *Common Executioner*, who was as infamous in those Days, as at present ; and by the * *Censorian Laws* not allow'd to dwell in the City. But the † *Tribune* or Colonel having first touch'd the Criminal with his *Baton* or Stick, he was thereupon deliver'd up to the Soldiers, and commonly, before he could run through the Camp, put to death. This *Lipsius* exclaims at as a Piece of Inhumanity ; because the Offender was executed by his *Comrades* ; as if it were not more honourable to die by

* *Censoriis Legibus non Foro modò, sed & urbis domicilio exclusi fuerint carnifices. Sichtermanni Dissert. De Penis Milit. cap. 2.*

† *Accepto Fuste Tribunus, vix tantum attingebar damnatum, quod ubi factum erat omnes qui in castris erant cadentes fustibus lapidibusque plerosque in ipsis castris conficiebant. Polyb. lib. 6. cap. 35.*

their

Military Punishments. 11

their Hands, than those of the Common Hangman. Both the *Antients* and *Moderns* have ever esteem'd some sorts of Punishments more *Infamous* than others ; which Opinion is grounded upon the Circumstances that attend them, especially, the *Hand* employ'd in the Execution ; and therefore, when *Aeneas* had given *Lausus* his Mortal Wound, he comforted his dying Enemy with these Words :

*Hoc tamen infelix miseram solabere mortem
Æneæ magni dextrâ cadis.*

[Virg. *Æn.* lib. 10. V. 829.]

*This Comfort have in thy sad Funeral,
That thou by Great Æneas Hand didst fall.*

In succeeding Ages *Swords* were made use of in the place of *Sticks* or *Cudgels*, in much the same kind of Punishment,

12 Of the Roman

as it is describ'd by || *Tacitus* ; and *Polybius* says, they used Stones on these Occasions ; Which seems to have led *Steuochius* into the Mistake, that Stoning was a distinct * Roman Military Punishment ; but the Authority he goes upon is call'd in question by † *Siebertman* and ‡ *Sir Charles Turner*, who think the Instances of stoning to Death, which we meet with in the § Roman Armies, are to be imputed to the Violence of seditious Persons, and no Argument to prove it was a regular Military Punishment.

|| Stabant pro concione Legiones districtis gladiis, Reus in suggestu per Tribunum ostendebatur, si nocentem adclamaverant, princeps datus trucidabatur. *Tacit. Annal. 1. cap. 44. Edit. Amstel. 1701.*

* *Dissert. De Penis Milit. cap. 2.*

‡ *Pallas Armata, Chap. 23.*

† *Flavius Postumius Imperatorem insipientem quas promiserat preda facta in castris seditione lapidavit. Florus, lib. 1. c. 22. lib. 4.*

§ *Valens coercere seditionem ceptabar, ipsum invadunt saxa jacunt. Tacit. Hist. lib. 2. cap. 29.*

CHAP.

Military Punishments. 13

CHAP. I.

THE Crimes punish'd by the *Fustuarium*, were * Negligence in going the Rounds, Sleeping on the Watch, Theft, Bearing False Witness, Sodomy, and all other Faults, of which any Man had been thrice convicted, guilty to answer

The Consequence of not performing the Duty of a Centinel or Watch with the utmost Care and Alertness, is too obvious to want any Enlargement on that Subject. The whole *Carthaginian*

* Si nihil tale factum redit in circuitorem culpa, statimque advocato consilio, à Tribuno causa cognoscitur, & si damnatus fuerit *Fustuarium* subit. *Just. Lips. in Polyb. lib. 5. De Milit. Roman. Dial. 18.*

Fuste autem percutitur & is qui furto aliquid abstulit è castris, & qui falsum testimonium dixit, & qui flore ætatis corpore suo deprehenditur abusus. Itemque qui ter ob eandem culpam mulctatus fuerit. *Lips. in Polyb. lib. 5. De Milit. Rom. Dial. 18.*

14 *Of the Roman*

Army in *Spain* was surpriz'd and routed by a Handful of Men, under the Command of *L. Marcius*, and the *Capitol* it self narrowly escaped being seiz'd by the *Gauls*, for want of Vigilance in the Out-Guards, that were placed to secure, and give the Alarm to those within. * *Polybius* has written copiously upon the excellent Method used by the *Romans* in going the Rounds, giving the Word, and setting the Watch. The Reader may also consult † *Voet De Jure Militari*; wherein he will find many Examples of the Severity of the Antients upon Offenders against this Branch of Military Discipline.

* *Polyb. liq. 6.*

† *Voet. cap. 4. n. 25.*

Military Punishments. 15

Nor were the Romans less careful in providing for the Security and Preservation of every Man's Property within the Camp. To this end, Theft was punish'd with the utmost rigour, not only as a Crime destructive of Society, but as a Sin against Religion; every one belonging to the Army, upon his first Encamping, being obliged to take the **Sacramentum Castrense*, or *Camp Oath*;

* IN EXERCITU DECEMQUE MILLIA PASSU-
UM PROPE TURTUM NON FACIES DOLO MA-
LO SOLUS, NEQUE CUM PLURIBUS PLURIS
NUMMI ARGENTEI IN DIES SINGULOS EX-
TRAQUE HASTAM, HASTILE, LIGNA, PABU-
LUM, UTREM, FOLLEM, FACULAM, SI QUID
IBI INVENERIS QUOD PLURIS NUMMI ARGEN-
TEI ERIT, UTI TU AD COSS. SIVE AD QUEM
EORUM ALTER JUSSERIT PERFERAS, AUT
PROFITEBERE IN TRIDUO PROXIMO QUIC-
QUID INVENERIS SUSTULERISVE DOLO MALO
AUT DOMINO SUO CUJUM ID CENSEBIS ESSE
REDDES UTI QUOD RECTE FACTUM ESSE
VOLES. *Aul. Gell. Noctes Atticae, lib. 16. cap. 4.*

See the Notes of R. H. Schelius upon this Oath, and
Gravius's Thesaur. Tom. x. p. 1177. & seqq.

the

16 Of the Roman

the Purport of which was, *That he should not steal or pilfer in or about the Camp; and if he happen'd to find any thing, he was within Three Days to carry it to the General, or some other Chief Officer, or to restore it himself to the Person, whom he believed it belonged to.* And tho' * Polybius says, this Punishment was inflicted only for *Theft committed in the Camp, or within Ten-thousand Paces of it;* yet he seems to think, it was also intended to put a Check upon such as were addicted to *Maroding and Plundering the Countrey on the March;* who, no doubt, were as severely handled, as those that were convicted of *Theft within the Limits mentioned in the Oath:* For besides

* Polyb. lib. x0.

what

Military Punishments. 17

what is transmitted to us of the Emperours * *Aurelian* and *Pescennius Niger*, who in the most dissolute times did strict Justice upon Soldiers convicted of this Crime, we have abundance of Examples in History, that shew it did not want due Punishment in earlier Ages. *Sertorius* beheaded a whole Legion for *Pillaging and Wasting the Countrey*. † *Tiberius* order'd a Soldier to be put to death for stealing a *Peacock*: But this, indeed, is by *Suetonius*, who gives the account of it, plac'd among his Acts of Cruelty, as bearing no proportion to the quality of the Offence.

* *Pescennium Nigrum ob unius Gallinacei direptionem decem manipulones qui raptum ab uno comederant, securi percuti iussisse. Spartianus in Pescen.*

† *In Vita Tiberii, cap. 60.*

18 Of the Roman

In every Nation and Age, an Oath has been of the greatest weight, and most sacred Authority; and it was a receiv'd Opinion among the Heathens, that some very * grievous Punishment would fall upon Persons forsworn; but because Divine Vengeance did not always immediately overtake the Guilty, and the Fear of it became by that means insufficient to suppress the enormous Sin of Perjury, Laws, with heavy Penalties were invented for that purpose; among which was the *Fustuarium* for those Soldiers, that should impiously bear false witness upon Oath against another.

* Deorum injurias diis curæ. Tacit. *Annal.* 1. cap. 73.

From whence dire Plagues, and dreadful Slaughters come

On base and perjur'd Wretches. Hesiod.

Nullum enim vinculum ad adstringendam fidem jurejurando majores arctius esse voluerunt. Cicero de Offic. lib. 3. cap. 31.

It

Military Punishments. 19

It will seem no Wonder, that the *Romans* were so rigorous and exact in punishing all Unnatural Abuses of the Body, if we consider the vast Number of Youths, and those, as * *Lipsius* says, *in ipso vigore formæ, In the very Prime of their Beauty*, assembl'd in their Armies, and, as some affirm, the strict Prohibition that no Woman should be admitted into their Camps.

When a young Gentleman, who had been solicited by his Officer to prostitute his Body, stabb'd him, with this Expression, *Virum me scito ; Marius*, the Tribune, not only acquitted, but commended him for his Detestation and Resentment of so foul and unmanly an Attempt. But it was not

* *Dial. 18. lib. 5. De Militiâ Romanâ.*

only forbidding Women the Camp, that made the Roman Soldiery so prone to this Beastly Vice; they were not allow'd to have * Wives so long as they continu'd in the Service; that is, if they were single when they first entred; till the Emperor † *Septimius Severus* repeal'd that Law, and suffer'd them to marry. For tho' By the Municipal Laws of Rome all Men were encourag'd to Marry, and Rewards given to those that had a certain Number of Children, and a Penalty laid upon Celibary; yet the Camp was to be under a quite different Regulation, lest the too frequent Use and soft Conversa-

* *Zach. Habertus, Dissert. ad l. 63. de Rit. Nupt. c. 8.*

† *Primus autem ut uxorem domi milites Romani haberent Imperator, Severus permisit, ut auctor est, Lib. 3. Herodianus. Stewechius ad lib. 1. Vegetii, cap. 3.*

Military Punishments. 21

tion of Women should enervate the Soldier, and render him less capable of his Military Duties. And 'tis evident from what * *Tacitus* says of *Tiberius's* sending *Drusus* early into the Army, that it was then look'd upon as a Place of more † *Vertue*, and stricter *Morals*, than the City. Yet the Learned are by no means agreed in this Particular; some contending, that this Rule or Custom of not suffering Women in the *Roman Camps* was Religiously observed; others, that notwithstanding their utmost Precaution, the Ladies of Pleasure did steal into them, and were entertained there. To support the first Opinion,

* *Juvenem urbano luxu lascivientem melius in Castris haberi. Tacit. Annal. 2. cap. 44.*

† *Castra dicta, quasi casta, quod castrarent in his libido. Isidorus.*

22 Of the Roman

Lipsius produces the Authority of *Propertius* :

Romanis utinam patuissent Castra puellis !

But * *Siebterman* makes it plain, this Verse does not relate either to Mistresses or Wives, but to Women in general, who, by reason of their Sex, were not allow'd to bear Arms. And because *Lipsius* foresaw, it might be objected, that *Scipio* in his Reformation of Military Discipline, discharged the Camp of Two Thousand loose Women ; from whence it might be inferr'd, That Married Women were still kept in the Camp, and that Strumpets had been permitted to be in it before *Scipio's* Re-

* *Dissert. de Pœnis Milit. cap. 3.*

formation ;

Military Punishments 23

formation ; he asserts, that the Latin Word *Scorta* in that place is not taken for *Lewd Women*, but *Viri mulieriosi* ; and it cannot be deny'd, but that it is sometimes used in a Masculine Signification ; yet if it be consider'd, that * *Lipsius* himself says, this Crime was Capital in the Roman Army, how can it be imagined, that *Scipio*, whose Intention was to restore Military Discipline, and purge the Camp of those Vices that had crept into it through the Indolence of former Commanders, could be satisfied with the bare turning them out of the Army, when they had every one incurred the Penalty of Death by their unnatural Practices ? But this Difficulty is clear'd by † *Appian* ; who

* *Lib. 5. De Militiâ Romanâ, Dial. 18.*

† *De Bellis Hispani.*

speaking

24 Of the Roman

speaking of *Scipio* on this occasion, uses these Words: * *Ἐλθὼν ὁ ἑμπορεύει πάντας ἐξήλασε καὶ ΕΤΑΙΡΑΣ, καὶ μάνεις, καὶ δοῦλας.* Upon his first coming to the Camp, he sent away all the Sutlers, Whores, Conjurers and Priests. Now ΕΤΑΙΡΑΙ is no where to be found in the Sense *Lipsius* applies to the Word *Scorta*. Besides, he tells us in the same † Book, that a lewd Woman was found in Carnal Act in the ‡ principal Street of the Camp; which was accounted Sacred, because their Altars were erected in it. Nor does *Tacitus*, from whence he has the Story, complain, that a Woman was found in the Camp; but that she

* Simul atque in Castra venit, mercatores omnes, SCORTA, Ariolos, sacrificosque expulit.

† *Lipsius*, Lib. 5. Dial. 4.

‡ In ipsis principiis stuprum ausa. *Tacit. Hist. Lib. 1. cap. 48.*

had

Military Punishments. 25

had profaned so * *Sacred* a Place. If therefore no Woman had been permitted to be in the *Roman* Camp, how could that Place have been polluted in the manner mention'd by the Historian? But *Lipsius* could not be ignorant, that the Empress *Agrippina*, *Nero's* Mother, honour'd the Place of her Birth on the Banks of the *Rhine*, with a Colony of *Romans*, which in time grew to be the Famous City of *Cologne*. Now she could not have been born there, if her Mother † *Agrippina* had not been allow'd to have staid in the *Roman* Camp with her Husband *Germanicus*. So that

* *Sacra & casta principia habita fuisse in Religione.*
Lips. lib. 5. Dial. 4.

† Sed *Agrippina*, quo vim suam, fociis quoque nationibus ostentaret, in oppidum *Ubiorum*, in quo genita erat, veteranos, Coloniamque deduci imperat, cui nomen inditum ex vocabulo ipsius. *Tacit. Annal. 12. §. 27.*

E

if

26 Of the Roman

if there was any Law to forbid Women the Camp, 'tis plain, from the Instances before mentioned, it did not extend to Officers, nor was very strictly observed by the common Soldiers.

The next Crime which fell under the Discipline of the *Fustuarium*, was *Stubborness*, or an obstinate Perseverance in doing ill. Some allowance is to be made to Beginners, and such as are * ignorant of Military Discipline; but old incorrigible Offenders, that are hardened in Wickedness, and act in contempt of the Laws, ought to suffer without Mercy: Wherefore the Romans pu-

* Sed tyronibus parcendum est, qui si iterato hoc admiserint poena competenti adficiantur. *Digest. lib. 59. Tit. 16. De Re Militari. Leg. 3. §. 9.*

Sed & ignorantibus adhuc Disciplinam Tyroni ignoscitur. *Eod. Leg. 4. §. 13.*

Military Punishments. 29

nish'd those that had been * thrice
convicted and fined, *capitally*; Not so
much for the simple nature of the Fault,
† as the Uncertainty to what pitch of
Extravagancy their Evil Disposition
might lead them; and because Men by
a Frequency in doing ill, contract such
a Familiarity with Vice, as they will
hardly ever be able to renounce. Be-
sides, the Law provides, that *all De-
grees of † Contumacy in a Soldier, shall be
punish'd with Death.*

† O τὰς πάλαι καὶ αὐτὰς αἰτίας ἡμῶν. *Polyb. lib. 6.*

† Quod talem pravo ingenio censebant & factum ad
peccandum, & quod quasi per contemptum ludibriumque
Legis peccaret. *Lips. De Milit. Rom. lib. 5. Dial. 18.*

† Contumacia omnis adversus Ducem vel Praesidem mi-
litis capite punienda est. *Digest. lib. 49. Tit. 16. De Re
Milit. Leg. 6. §. 2.*

CHAP. III.

THE Crimes treated of in the foregoing Chapter are common to all, and Capitally punished, as well in such as do not belong to the Army, as those that are in it, tho' in a different manner; that is, in the Soldier by the *Fustuarium*. Let us now see what were properly *Military Crimes*, and capitally punished in the *Roman Armies*. Polybius mentions three: *Ἐὰν τις ψευδῶς αὐτὸν ἀνδραγαθίᾳ καταγγέλοι τοῖς ἀξιωμακοῖς ἐνεκεν τῆς τιμῆς λαβῆναι.* If any falsely reported a brave Action of themselves to their Officers, with a Design of obtaining Honour or Reward for the same. *Ὅποιος ἐὰν τις ἐς ἐπεσφείαν ταχέως πόρε χάριν λίπον τὸν δοδόντα τόπον.* If any being placed Centinels or Guards, deserted

Military Punishments. 29

deserted their Posts through Fear. 'Εάν

τις ἀποπίῃ τῆς φάλαγγος καὶ αὐτὸν τὸν κίνδυνον

ἂν φοβέται. If any one through Fear cast

away any part of his Armour in time

of Danger. These, he says, are Crimes

which the Romans imputed to Cowardice

and ill Conduct. Αἱ δὲ οὐκ ἀπὸ τῆς ἀνδρείας ἀλλὰ ἀπὸ τῆς

I have already shewn, it was Ca-

pital in a Soldier to Bear false witness;

which is to be distinguish'd from this

Crime, that having respect to Religi-

on, this relating only to the foolish

Boasting of vain-glorious Men. The

Reason why the Romans made this Of-

fence Capital, was, because they pro-

posed, and gave great Rewards to such

as signalized themselves in time of

Action. Lipsius relates from Livy, a

warm Dispute between Two Brave

Officers, who should have the Reward

promis'd

30 Of the Roman

promis'd by Scipio to: the Person who first mounted the Walls of * New Carthage; which, for the greater satisfaction of the Curious, I have set down at large in the Margin.

The leaving or deserting a Post or Station, was a Capital Offence by the

10 Exemplum illud in Livio, cujus hic sensus si non verba. Scipio Carthaginem Novam cepit sua fortuna pariter & militum virtute, sedit pro Tribunali, ut mos, premia cuiusque opere daturus. Coronam muralem proposuit ei qui Primus murum ascendisset. Duo professi sunt, Q. Trebellius Centurio, & Sex. Digitius Socius Navalis. Magno certamine Res gerebatur, cum sui cuique corporis fautores & suffragatores adgregarentur. Scipio, ut litem decideret, res recuperatores dedit, qui testibus auditis cognoscere statuerentque. Id vero non remedium sed augmentum motus fuit. Stabant utrinque per omnes Deos parati jurare magis quæ mallet quam quæ scirent esse, per signa, per aquilas, & per quicquid esset Religionis. Lælius ille sapiens mali exempli rem censens, & non longè à seditione, ad Scipionem venit, prospicere monuit & temperare: Ille igitur pro Tribunali sic pronuntiavit: *Se satis compertum habere Q. Trebellium & Sex. Digitiū pariter in murum ascendisse, sequi eos ambo virtutis causā coronis muralibus donare.* Lips. de Milit. Rom. lib. 5. Dial. 18.

Roman

Military Punishments. 31

Roman Discipline : But Polybius confines it to those only that did it *na oco, thro* Fear, for which Lipsius applauds him, perhaps, without any great reason : For Suidas upon this same Passage, observes, that the Roman Law, condemning the Soldier to die, who deserts his Station, * *causa quâcunque*, upon any account whatever, is too severe ; he makes no mention of Fear, but says, *causa quâcunque*, without exception. And so † Suetonius speaks of Augustus in general Terms, He condemned the Centurions and Subalterns who deserted their Posts, to suffer capitally. But, says Lipsius, what if an Officer or Centinel be driven from his Post by

* Et severa in eo Lex est Romanorum ut moriantur qui causâ quâcunque excesserint. Suidas. Lipsio interprete, in M. R. lib. 5. Dial. 18.

† In Vita Augusti, cap. 24.

a supe-

32 Of the Roman

a superior Force? * It is but reasonable in that case to excuse him; and therefore the Restriction *ἂν ποῖον* was rightly added by *Polybius*, as if deserting or quitting a Post for any other Cause was not a Capital Offence; the contrary of which is evident from the Testimony of the Authors above-cited: And indeed, if we consider its Nature, how could it be otherwise? For where, I pray, is the difference, as to the ill consequence, whether a Soldier leaves his Post for fear of losing his Life, or to go to his Mistress, if in the mean time the Enemy gets possession of it? Nor will, what *Lipsius* says in behalf of him that is driven from his Post

* Quid enim si imperus hostilis pepulit & vis violenta?
 Omnis ratio est ignosci. *Lips. lib. 5. Dial. 18. De Milit. Rom.*

by

Military Punishments. 33

by a superior Force, be allow'd as a good Excuse, if it be consider'd, that it was a *Roman Military Maxim*, * *Either to conquer or die*; because they were sure to be punished with death, if they suffer'd themselves to be overcome. But it may be said, Why then did *Polybius* add these Words? To this it is answer'd, That it is not pretended they are superfluous; but only that by this Restriction, *through Fear*, he did not intend to signify, that the Crime of *deserting a Post* was in no other case *Capital*: For 'tis plain, these Words, *ὅς τε χάριν*, and *διὰ φόβου*, relate to the Distinction he makes just before, of

* Suis militibus Legem olim latam fuisse, ut aut vincerent pugnando, aut morerentur: quippe olim viam nullam salutis aliam victis superesse. *Polyb. Lipsio interprete in fine, lib. 6.*

34 Of the Roman

Crimes that are common to all Men, and such as are to be imputed to ἀνδραγαθία καὶ ἡρωϊσμὸς ἀνδρείου, the *Cowardice* and *ill Conduct* of a Soldier, both which are notoriously evident in the Man that leaves his Post for Fear; but not in him that is forced to retreat by an over-powerful Charge of the Enemy, which, however, in strictness, is punishable with Death, tho' not so infamous as the other.

The same Argument holds good in the following Crime of a Soldier's throwing away any part of his Arms in time of danger, thro' Fear. Here again, *Lipsius* distinguishes, and makes this Offence Capital, * under a double Restriction;

* Cum duplici restrictione, si in acie, si per metum.
Lips. De Milit. Rom. lib. 5. Dial. 18.

that

Military Punishments. 35

that is, if it were done in time of danger, and thro' Fear: both which, as I said before, relate to the Distinction above-mentioned: For *Modestinus* lays down the Law in general Terms, that * *Whoever loses or alienates his Arms, is to be punished with death.* And *Paulus*, another great Lawyer, says plainly, † *The Crime of alienating, or selling of Arms, is equal to that of Desertion:* Not a word of *Action*, *Danger* or *Fear* by either of these. From whence we may gather, that altho' *Polybius* makes it Capital for a Soldier to throw away any part of his Arms, thro' Fear, and in time of danger, yet 'tis not from

* *Miles qui in bello arma amisit vel alienavit, capite punitur humanè militiam mutat. Digest. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 13.*

† *Arma alienasse grave crimen est, & ea culpa desertioni exæquatur. Dig. eod. Leg. 24. §. 1.*

36 Of the Roman

thence to be inferr'd, that doing it at any other time, or for any other Cause, was not punishable in the same degree. This is plainly made out, by what *Valerius Maximus* relates from *Plutarch* of *Cassius Scæva*, a Common Soldier, in *Julius Caesar's* Expedition against this Island, who, with four of his Companions, having taken possession of a Rock near the Shoar, after they had forsaken him, maintain'd his Station for a long time against a great Number of the Enemy: But being at length run thro' the Thigh, and having lost his Head-piece, and receiv'd several Wounds in his Face, he threw himself into the Water, leaving his Shield behind him, and so swam to the Shoar, where seeing the Emperour, he immediately fell at his Feet, and ask'd Pardon for the

Military Punishments. 37

the Loss of his Arms. * *A Great Example*, says my Author, of *Bravery*, but a far greater of the *Observance of Military Discipline*; according to which, remembering that he was liable to suffer death, he took care to fly immediately to the Emperour for relief against the Severity of the Law. Which Story being touch'd upon by *Lipsius*, in his Notes upon *Polybius*, it is surprising he should not have observ'd the Penalty of losing or quitting Arms was not to be confin'd to the Case of *Fear*; since nothing could be so remote from it, as this Brave *Roman's* Behaviour; and yet he did not think himself out of danger, till the Emperour had

* Magnus prælio, sed major disciplinæ militaris memoria. *Valer. Max. lib. 3. cap. 2.*

approved

38 Of the Roman

approved of his Conduct, and pardoned him.

So much for the Military Crimes subject to the *Fustuarium*, according to *Polybius*. There were several others also punishable after the same manner, as may be gather'd from *Justinian's* * Laws, † *Cicero*, † *Livy*, and ‖ *Lampridius*; which last, in his Life of the Emperour *Alexander Severus*, reports, that if any Officer or Soldier on the March deviated and went into the Possessions of

* Qui agmen excessit ex causâ, vel fustibus ceditur, vel mutare militiam solet. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 5. §. 16.*

† Nam si ille Consul (Antonijs) Fustuarium meruerunt Legiones quæ Consulem reliquerunt. *Cic. Philip. 3.*

‡ Fustuarium meretur, qui signa relinquit, aut præsidio decedit. *Liv. lib. 5.*

‖ Cap. 51.

his

Military Punishments. 39

his Subjects, he was, according to his Condition, either punished with the *Fustuarium* in the Emperour's Presence, whipt with Rods, or condemn'd. Where we are transiently to observe, that the Word *Condemnatio* signifies a pecuniary *Mulct*; being often, as the Commentators and Expositors of the Law affirm, * us'd absolutely in that sense. *Homicide* was also punished with the *Fustuarium*, as we learn from † *Hirtius*, who mentions a Soldier that underwent it for killing his Brother. It would be easie, were it necessary, to produce many more Examples of this nature: But let these suffice concerning the *Fustuarium*.

* *Cod. Theod. Leg. 11. De Milit. Veste. Leg. eod. Ne quis in Palat. &c.*

Vide Gothofr. ad Leg. 12. Cod. Theod. De Re Milit.

† *Miles qui fratrem suum in Castris jugulabat, interceptus est à nostris, & fuste percussus. Hirt. cap. 27.*



CHAP. IV.

THE next Roman Military Punishment that comes under consideration, is *Decimation*, so call'd, from every *Tenth Man's* suffering death : But some will not allow *Decimation* to be a Punishment ; because, say they, it is only a preparatory * Step or Means to come to it,

* *Faber Semestrium. lib. 1. cap. 28.*

and

Military Punishments. 41

and not the Punishment it self ; yet, methinks, we may give it that Name properly enough, since every *Tenth Man* being executed, the rest were condemned to live upon *Barley* instead of *Wheat*. The manner of it is thus described by * *Polybius* : If at any time it happen'd that whole Companies, press'd by the Enemy, gave ground, or turned their Backs, the Practice of the Romans was not to put them all immediately to death ; but they found out an Expedient both profitable and terrible ; For the Tribune calling the Legion together, and producing those which had been faulty, first gave them a sharp Reprimand, and then out of the Offenders he chose by Lot sometimes Five, sometimes Eight, sometimes Twenty (al-

* *Polyb. lib. 6. cap. 36.*

42 *Of the Roman*

ways having an Eye to the Number, and aiming as near as he could, to take every Tenth Man,) and those on whom the Lot fell, were beaten to death with Clubs without Remission. The Rest were condemned to have their Allowance in Barley instead of Wheat, and to quarter without the Intrenchment of the Camp. Thus the Danger of the Fatal Lot hanging equally over every Man's head, and no one knowing where it would fall, tho' all were certain to be reduced to Barley Bread, every one was struck with Terror and Apprehension, and a moderate Atonement made by the Death of a few, for the general Guilt. Here you have the Occasion explained, and Manner of inflicting this Punishment: To all which I shall speak more particularly anon.

Tho'

Military Punishments 43

Tho' * *Galba*, upon his Entry into *Rome* as Emperour, commanded every Tenth Man who had opposed him, but afterwards submitted, and were receiv'd into his Protection, to be put to death, it was ever look'd upon as an unlawful and tyrannical Action, and made use of as such by *Otho*, to alienate the Peoples Minds, when he began his Attempt to Dethrone him. But as it was used in the *Roman* Armies to punish whole *Legions*, *Cohorts*, or *Maniples*, for Mutinying or Misbehaviour in time of Action, it must be commended as an Invention of a Noble and Wise Temperature, neither inclining to a Cruel Severity, nor betraying a Slackness of

* Horror animum subit quotiens recordor feralem introitum, & hanc solam *Galbæ* victoriam cum in oculis urbis decumari deditos juberet quos deprecantes in fidem acceperat. *Tacit. Hist. lib. 1. cap. 38.*

44 Of the Roman

Discipline ; both which have very ill Effects in all kinds of Government. And tho' *Plutarch* relates of *Sertorius*, that he caused all the Slaves who were of *Marius's* Faction, to the number of Four Thousand, to be shot to death with Arrows, it was a Precedent the most cruel of the Emperours did not chuse to follow. *Julius Capitolinus* says, that when *Macrinus's* Army mutiny'd, he generally punished them by *Decimation*, but sometimes by *Centesimation* ; of which Word he was fond of being the * *Inventer*, as a Mark of his Clemency, in causing One only of an

* Cùm seditiones militares pateretur multò sæpiùs decimavit, aliquando etiam centesimavit, quod verbum ipsius proprium, quod se clementem diceret quando eos centesimaret, qui digni essent Decimatione atque Vigesimalione. In *Vita Opilii Macrinus*, cap. 12.

Military Punishments. 45

Hundred, instead of One in Ten or Twenty that deserv'd it, to be put to death.

Some have been induced by *Polybius's* Words to think, that the *Fifth*, *Eighth* or *Twentieth* Man was by Lot condemned to die : But *Lipsius* has cleared up this Point, and shewn, his meaning was, that according to the Number of Delinquents, sometimes *Five*, sometimes *Eight*, or perhaps *Twenty* suffered. * Suppose, says he, *five Decuries* were found guilty, then *five* Men were put to death ; if *Eight* had misbehaved themselves, then *Eight* ; and if *Twenty*, *Twenty* ; that is, the *tenth* Man of each *Decury*.

Yet, upon some occasions, they chose rather to punish the Beginners or Ring-

* *Pone, inquit, quinque Decurias peccasse ; quinque punientur ; pone Octo, Octo ; Viginti, Viginti ; Decimus scilicet Decuriarum. Lips. De Milit. Rom. lib. 5. Dial. 18.*

leaders

46 *Of the Roman*

leaders in the Offence, as *Polybius* tells us *Scipio* did ; who having calmed the Commotion at *Sucro*, and reduced the Mutineers to Submission, commanded the Authors of it only to be executed.

The manner of putting the Sentence of *Decimation* in Execution, was thus : First, the Centurions and Ensign-bearers of the *Cohort* that had misbehaved, were by the *Præfekt* or *Tribune* order'd away and put to death ; then the private Men were drawn out into *Decuries* or *Tens*, and cast Lots among themselves who of them should die. Thus it was that * *L. Apronius* decimated that dishonourable Cohort which run away from *Tacfarinas* in *Africa* ; and *Augustus* at *Promona* a City of

* Decimum quemque ignominiosæ cohortis forte ductos fusti necat. *Tacit. Annal. 3. cap. 21.*

Military Punishments. 47

Liburni, decimated a Cohort for quitting their Station, ordering the rest to be fed with * *Barley* instead of *Wheat* for that season. Monsieur du † *Choul* mentions a *Erafs-Coin* in his possession wherein this terrible Execution is represented.

Concerning the Inventer of this Punishment, it is not certainly known who he was : But thus much appears from the *Roman History*, That *Appius Claudius* put it in practice soon after the Regal Government ended ; and it seems, it was always reckoned of so great Antiquity, and so peculiar to the *Romans*, that ‡ *Dionysius*

* *Appianus in Illyr. p. 767.*

† *Tractatus de Castrametatione & Disciplinâ Militari veterum Romanorum, p. 54.*

‡ *Lib. 4.*

48 Of the Roman

Halycarnassens, Appian and Plutarch, all call it * *Lex Patria*. But it suffered a long Interruption, and was afterwards revived and transmitted to Posterity by † *M. Crassus*.

The Reason or Design of this Punishment cannot be better explained than it is by ‡ *Cicero*, viz. That so there might be *Pœna ad paucos, Terror ad omnes*. Neither is the Justice of it to be called in question; because it may happen to fall on the *Innocent* as well as the *Guilty*, and the *Brave* may suffer as well as the *Coward*: For,

* *Lipsius de Milit. Rom. lib. 5. cap. 18.*

† *Plutarch. in Crasso.*

‡ *Statuerunt majores nostri ut si à multis esset flagitium rei militaris admissum sortione in quosdam animadverteretur ut metus videlicet ad omnes, pœna, ad paucos, perveniret. Cicero pro Cluentio.*

Military Punishments. 49

as * *Tacitus* observes, every exemplary Punishment, consider'd in it self, hath something in it which is unjust and prejudicial to particular Persons, but sufficiently recompenced by the Service it does the Publick. Yet as it is more agreeable to the Dictates of Reason, that Offences committed by a Multitude should rather be revenged on the Contrivers and busie Abettors, than allotted by blind Chance to the Innocent ; so the † *Romans* frequently follow'd that Rule, of which there has been before given a remarkable Instance, in the detestable Mutiny of *Scipio's* Army at *Sacro*.

* *Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos, utilitate publicâ rependitur. Tacit. Annal. 14. cap. 44.*

† *Postquam deliberatum esset an in autores tantum seditionis animadverterent, vel an plurium supplicio vindicaret defectionem vicit sententia lenior ut unde orta culpa esset ibi poena confisteret ad multitudinem castigationem satis esse. Liv. lib. 28.*

H

CHAP.

50 Of the Roman



CHAP. V.

THE next Punishment that occurs, is that of *Beheading* by the *Ax* or *Sword*; the manner whereof is thus describ'd by *Livy*: * *Immediately the Voice of the Crier was heard citing by Name all that were condemned in the Court-Martial;*

* *Præconis audita vox citantis nomina damnatorum in Concilio, Nudi in medium protrahebantur, & simul omnes*

Military Punishments. 51

Martial; who being produced, were stript naked in the midst of them, and when every thing was ready for Execution, tied to a Stake, whipt with Rods, and and then beheaded with the Ax. In this manner * *Appius Claudius* punish'd the Centurions that had forsaken their Companies and Colours in his Battel with the *Volsci*.

Lipsius in his Notes upon † *Tacitus*, is of opinion, that the Use of the Ax as an Instrument of Justice, continu'd no longer than the Free State of *Rome*, and was succeeded under the Empe-

omnis apparatus supplicii expromebatur. Deligati ad palum virgisque caesi & securi percussi sunt. *Liv. lib. 28.*

* *Livii lib. 2.*

† *Lipsius ad lib. 15. Annal.*

52 *Of the Roman*

rours by the *Sword*, which, he says,
 was unknown to the Ancient Repub-
 lican Government even in the Army;
 therefore * *Lucan* says,

... Nondum artis erat caput ense rotare.

But, with all the Deference due to so
 Great and Learned a Man, one may
 venture to say he is mistaken in both :
 For neither was the Use of the *Sword*
 in Executions wholly unknown in those
 ancient times, nor is the Poet to be
 so understood : For his Meaning is, not
 that there were *many* or *few* beheaded,
 but that the Executioner, in the Age
 he wrote, having learnt his Trade

* *Lib. 3.*

Military Punishments. 53

to a greater degree of Perfection, could dexterously cut off the Head at a stroke; which Art was a Secret when *Pompey* was murther'd; and therefore he describes *Septimius* who cut off his Head, as an ignorant unexperienced Executioner.

*Tunc nervos venasq; secat, nodosq; frangit
Ossa diu, nondum artis erat caput ense rotare.*

*There awkward, haggling, he divides the Bone,
The Headsman's Art was then but rudely
known, [Rowe.*

But under the Emperours they grew to be greater Artists; and tho' the same manner of Beheading had been in use long before, the Executioners were not so expert as to sever the Head
from

54 Of the Roman

from the Body at one Blow. And 'tis evident from the Expression *Jugulum præbere*, which we often meet with in the Roman Historians, that cutting the Throat with a Sword was common under the Free State, as shall be shewn more fully hereafter. But first, it must be observ'd, that *Lipsius* in his Notes upon * *Tacitus*, prefers the Punishment of the Sword, as more honourable than that of the Ax; and therefore, says he, when *Papinian* was by Order of *Caracalla* beheaded, in which the Executioner had used the Ax, the Emperor said, *Gladio te exequi oportuit meum jussu*; You should have put my Command in execution with the Sword. But since this Opinion is not supported with any

* *Tacit. Annal. lib. 15. Lipsio interprete.*
Casaubonus ad Suetonium in vita Augusti, cap. 15.

Authority

Military Punishments. 55

Authority of the Learned, I see no reason why that Reproof, as * *Valtrinus* judiciously observes, may not be taken either way ; as, that *Caracalla* thought *Papinian* had too much Honour done him by suffering under the *Ax*, as well as that he should design him a Favour, in permitting the Execution to be done with a *Sword* : Nay, the Circumstances of his Death seem to persuade the contrary : For what Favour could a Man expect, whose Life was taken away for refusing to defend the Emperour's murdering his own Brother ? As to the Passage of † *Xenophon*, cited by *Lipsius*, to prove *Beheading* the most reputable kind of Death, it seems to make little for his purpose, being in

* *Valtrinus De Re Milit. Roman. lib. 6. cap. 8.*

† *Xenophon De Cyri expeditione, lib. 2. extremo, De cæde Menonis Thessali.*

general

56 Of the Roman

general Terms, without distinction of the Instrument, and that too, of the Grecians, not the Romans. Casaubon, upon better grounds, calls it a milder and more noble Punishment, for which he brings the Authority of Livy. * *The Loss received in the Battle was not so considerable as that the Tarquinians sacrificed three hundred and seven Roman Soldiers, whom they had taken Prisoners; Which shameful Execution rendered their late Disgrace something more notorious.* And then this Learned Commentator adds, the Reason why this kind of Death was accounted so dishonourable, is plain from † *Florus.*

* Nec in acie tantum ibi cladis acceptum quam quod cccvii milites Romanos captos Tarquinienses immolârunt, quâ scditate supplicii aliquantò ignominia populi Romani insignior fuit. Liv. lib. 7.

† Legatos quippe nostros, nec gladio quidem, sed ut victimas securi percutiunt. Flor. lib. 2. cap. 5.

They

Military Punishments. 57

They put our Embassadors, says he, to death, not with the Sword, but as Victims, with the Ax. Now whether it can be rightly inferr'd from the foregoing Passage of *Livy*, that the *Sword* was reckon'd a more honourable Instrument of Execution than the *Ax*, is left to the ^{te}determination of better Judges: For the Disgrace mentioned therein, seems to have arisen, not so much from the Soldiers suffering under the *Ax*, as their being offered by way of *Sacrifice* to the *Infernal Gods* of their Enemies. As for the Passage in *Florus*, 'tis probable, he spoke the Language, and according to the prevailing Opinion of his own time.

But admitting the Punishment of the *Ax* to be less honourable than that of the *Sword*; yet *Lipsius's* Assertion concerning the Use of the *Sword's*

I

being

58 Of the Roman

being wholly * unknown in the time of the Republick, must necessarily fall to the ground: For how could *Florus* make a distinction between the two Punishments, unless that of the *Sword* had been likewise in use? I need not mention the frequent Instances given by † *Hirtius*, of Soldiers being put to death with the *Sword*. Yet it can not be denied, that under the Emperours, the *Ax* by degrees grew into disuse, and was succeeded by the *Sword*.

The Office or Work of *Execution* was generally committed to Persons whose proper Business it was; that is,

* *Reip. prisce gladii supplicium fuisse ignotum.* Lipf. ad Tacit. Annal. lib. 15.

† *Hirt. Comment. de Bello Afric. & Hispan.*

Military Punishments. 59

the † *Speculatores*. Being brought out of the Camp, as he held his Neck ready for the Stroke, his Fellow-Soldier who was supposed to have been murther'd, appeared. Then the Centurion, who was to see Execution done, bid the Headsman, *Speculatorem*, put up his Sword. Sometimes Soldiers were deputed for this Office, as *Lipsius* in his Notes upon *Tacitus*, and * *Stewechius* upon *Vegetius* endeavour to make out by help of this Passage in *Suetonius*: † There was a Soldier, a dextrous Headsman, who

† Extra vallum deductus, & jam cervicem porrigebat; cum subito apparuit ille commilito qui occisus videbatur. Tunc Centurio supplicio præpositus, condere gladium *Speculatorem* jubet. *Seneca de Irâ, lib. 1. cap. 16.*

* Erant quippe hi *Speculatores* suppliciiis sumendis destinati. *Stewechius ad Vegetium, lib. 1. cap. 23.*

† *Miles* decollandi artifex quibuscunque è custodiâ capita amputabat. *Sueton. in Vitâ Calig. cap. 32.*

60 Of the Roman

cut off the Heads of Offenders. Now this Soldier was certainly the *Speculator*. Nor is it any Proof to the contrary, that he was called *Miles*; For so *Chaereas* terms the Executioner, who afterwards cut off his Head at one Blow, and ask'd him, if he were expert * *ad opayac*, or whether that was his first Essay? But *Lipsius* goes farther, and affirms, that the † *Tribunes* sometimes executed Malefactors with their own Hands; and ‡ *Stewechius* concurs in that Opinion, but with this distinction, that they were employed only when the Offender

* --- MILITEM à quo uno ictu occisus est, rogavit, an exercitatus esset *ad opayac*, an tum primum haberet gladium? *Joseph. Antiq. Jud. lib. 19. cap. 5.*

† *Lips. ad Tacit. Annal. 15.*

‡ Id ipsum tunc ita observatum, cum qui puniendus erat aliquâ dignitate reliquis antestaret. *Stewech. ad Vegetium, lib. 1. cap. 23.*

was

Military Punishments. 61

was a Person of Rank: Yet by the Authorities they alledge to support this Opinion, it does not appear, that after judicial Sentence of Death, any *Tribune* was ever order'd to do that Office. But in Cases of great Confidence or Secrecy, or when the Person to be dispatch'd was a popular Man, and it might be dangerous or difficult to proceed formally against him; then, in all likelihood, a *Tribune* was privately ordered to put him out of the way. Thus *Tiberius*, Brother to *Caligula*, was kill'd by a *Tribune*; and of later Ages, the Marquis *d'Ancre* in *France*, and the Duke of *Wallenstein* in *Germany*, were both taken off by Officers specially commissioned for that purpose. However, it must be allow'd, that both *Centurions* and *Tribunes* had
often

62 *Of the Roman*

often the Inspection and Superintendency of Executions. All here contended for, is, that it was not common for *Tribunes* or other Officers of distinction to execute Malefactors with their *own Hands*. Hence it was, that *Chaereas* in * *Josephus*, complain'd, and accus'd *Clemens* and *Papinius* of degenerating from *Soldiers* into *Hangmen*, by submitting to torment and butcher whomsoever the Emperour *Caius* commanded ; which he would not have reproach'd them with, had it been their proper Business ; because they could naturally and truly have answer'd, they were not to blame, since their Office oblig'd them to it. So that, all *Lipsius* proves, amounts to no more, than

* *Josephus, Antiq. Jud. lib. 19. cap. 1.*

that

Military Punishments 63

that upon occasions, where the Formalities of Law were laid aside, and extraordinary Dispatch and Fidelity requir'd, some bold and resolute Officer was made choice of to give the deadly Blow. Thus *Plautius Lateranus*, *Consul Elect*, was hurried away to the Place of *servile Executions*, and killed by the Hand of * *Staius* the Tribune; and † *Messalina* dy'd *ictu Tribuni*, as *Tacitus* reports. How weak and groundless therefore, this Assertion of *Lipsius* is, the Reader will judge.

* *Manu Staii Tribuni trucidatur, Tacit. Annal. 15.*

† *Ictu Tribuni transigitur. Tacit. Annal. 11.*



CHAP. VI.

Precipitation, or throwing headlong, was a common Punishment among the Romans. The Place of Execution was the *Tarpeian Rock*, which is elegantly describ'd by * *Seneca*, and,

* Stat moles abscissa in profundum, frequentibus exasperata faxis, quæ aut elidunt corpus, aut de integro gravius impellant, inhorrent scopulis enascentibus latera, & immensæ altitudinis tristis aspectus, electus potissimum locus ne damnati sæpius dejiciantur. *Sen. lib. 1. Controv.*

Military Punishments. 65

as he says, used in imitation of the *Jews* and *Greeks*, whose *Annals* abound with *Examples* of that kind. But, as the *Romans* inflicted it alike upon the *Citizen* and *Peasant*, as well as the *Soldier*, it may perhaps, seem irregular, to give it a Place among their *Military Punishments*; yet, as *History* affords some *Instances* of *Soldiers* condemned to suffer *that way*, for *Crimes* committed in their *Military Capacities*, it was not fit silently to pass over so worthy a *Monument* of the *Roman Severity*. Those *Soldiers*, then, whom we find were thrown from the *Tarpeian Rock*, were *Deserters*; of which sort, * *Marcellus* recovered *Three hundred* and se-

* *Livii lib. 24.*

66 Of the Roman

venty, in the Towns he took from the Samnites ; who being sent to Rome, were all first scourged with Rods in the Comitium, and then pitch'd headlong from the Tarpeian Rock, as the Centinel had been, thro' whose Neglect the * Gauls had like to have surprized the Capitol. Afterwards, whether this Punishment seem'd too cruel and severe to the Romans, as † Faber and ‡ Gothofredus are inclin'd to think ; or whether it happen'd thro' the Corruption and Remissness of their Government, it was intirely neglected, and at length repealed, a

* Livii lib. 5.

† Faber Semeſtrium, lib. 1. cap. 18.

‡ Gothofredus ad Leg. 35. lib. 43. D'geſt. De Pe-
nis.

Military Punishments. 67

¶ Law being enacted that no Man should suffer that kind of death. See *J. Ricquius de Capitolio Romano, cap. 3. & 4.*

CHAP. VII.

SOME Crimes, as † *Macer* observes, being committed by a *Peasant*, or other Person in a Civil Capacity, are either *not punished at all*, or *very lightly*; but if committed by a *Soldier*, with great Severity: Which is thus to be understood, that the same Crime is

¶ Non potest quis sic damnari ut de saxo præcipitetur. *Digest. lib. 48. Tit. 19. De Pœnâ, Leg. 27. §. 1.*

† Quædam delicta Pagano aut nullam aut levio-
rem pœnam irrogant, militi verò gravio-
rem. *Dig. lib. 48. Tit. 19. De Pœnâ.*

68 Of the Roman

punished in a *Soldier* more rigorously than in another : Not that the Roman Military Punishments were in themselves of a more dreadful nature : On the contrary, all that belonged to the *Army*, were by the Laws exempted from suffering many of the most grievous, to which Persons in Civil Life were liable ; as, to work in the * *Mines*, be tortured, or exposed to be devoured by Wild † *Beasts* ; For no *Soldier*, says *Modestinus*, was subject to any of these. But this was the Privilege of such only as were clear and unblemish'd

* In metallum, aut in opus metalli non dabuntur, nec torquentur. *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 1.*

† Ad bestias furcamque damnabitur (*desertor*) quamvis milites eorum nihil patiuntur. *Dig. eod. §. 10.*

Military Punishments. 69

in their Reputations ; which was quite otherwise with *Deserters* and *Fugitives*, who were look'd upon in the Law as * *Enemies*, not *Soldiers*, and therefore not allow'd the Right of † *Postliminium*, but might be put to death by any ‡ one wherever they were found. Nor had they so much favour, as to be condemned to suffer as *Soldiers*, but like *Murderers* and *Assassins*, were thrown to Wild Beasts, the most in-

* *Proditores transfugæ plerumque capite puniuntur, & exauctorati torquentur ; nam pro hoste, non pro milite habentur. Digest. eod. Leg. 7.*

† *Transfugæ nullum Postliminium est ; nam qui malo consilio & proditoris animo patriam reliquit, hostium numero habendus est. Digest. Ob. 49. Tir. 15. Leg. 12. §. 4.*

‡ *Transfugas licet ubicunque inventi fuerint, quasi hostes interficere. Dig. lib. 48. Tir. 8. ad Leg. Cornel. Leg. 3. §. 6.*

Digest. lib. 49, Tir. 1. De Appel. Leg. 18.

famous

70 *Of the Roman*

famous of all *Roman* Punishments, and generally inflicted upon *Criminal Slaves*. And tho' a **Deserter* returned of his own accord, he did not thereby avoid the Penalty of the *Law*, unless at his return he made some useful Discovery ; in which case his Life might be spar'd ; but that was the utmost Favour he could expect : For † however advantageous his Return might be to the Publick, it could not wipe away the Stain of *Treason* fixed

* Is qui ad hostem confugit, & rediit, torquebitur, ad bestiasque, vel in Furcam damnabitur. *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 10.*

† Quantumcunque enim emolumentum revertens Reipublicæ contulerit, non tamen ad diluendum Majestatis crimen quod ab hostes transeundo contraxit, sufficere poterit. Sic ut illo casu quo nullum ab eo supplicium fuerit exactum ex merâ potius gratiâ atque Principis clementiâ, quàm ullo novo merito pœnæ remissio indulta censeretur debeat. *Johan. Voet. De Jure Milit. cap. 4. n. 21.*

upon

Military Punishments. 71

upon him, by deserting the Service of his Countrey, and going over to the Enemy : So that if he escaped with Impunity, it was rather owing to the special Grace and Clemency of the Prince, than to any new Merit or Right he could pretend to.

From what has been said, we learn, that the *Romans* punished *Deserters* and *Fugitives*, by delivering them to *Wild Beasts*, as * *Valerius Maximus* reports *Scipio Africanus* did, after the Subversion of the *Carthaginian* Empire, and † *L. Paulus Æmilius*, when he had subdued

* Everſo Punico Imperio, exterarum gentium transfugas in edendis populo ſpectaculis ferit objecit. *Lib. 2. cap. 8. De Diſcip. Milit.*

† Et L. Paulus Perſe Rege ſuperato, ejuſdem generis & culpæ homines elephantis proterendos ſubſtravit. *Val. Max. cod.*

72 Of the Roman

Perfes King of *Macedon*. But it must be observed, these who were thrown to Wild Beasts, by way of *Punishment*, differ'd very much from such as were brought into the *Arena* to fight with them, being *fast bound to Stakes*, without any possible Means of resisting or defending themselves from the Fury of their ravenous Executioners.

But having before said, that *Deserters* and *Fugitives* were not to be treated as *Soldiers*, but as *Enemies* ; it may be asked, How this can be reckoned a *Military Punishment* ? It is answer'd, that *Military Punishments* are not only *those*, to which ingenuous or free Men are subject ; but such as at any time are inflicted for a *Military Crime*, notwithstanding the Person that suffers be not actually a Soldier.

Military Punishments. 73

Soldier. In which sense the Cross may likewise be properly enough set down among the Roman Military Punishments: For otherwise, it was peculiar to * *Slaves*, and Crimes of the most pernicious Example. But *Valerius* † *Maximus* and ‡ *Livy* both afford ample Testimony that Deserters to the Enemy were often *Crucified*, and that with great Justice: For what Punishment could be severe or infamous enough for Men that were not ashamed to draw their Swords against their Countrey, and turn them, as it were,

* *Plautus Mil. Glorios.* 2. 4. 19.

Conditione fugitivus nomine *Geta* sumptum de eo supplicium in servilem modum. *Tacit. Hist. lib. 2. cap. 72.*

Africanus malam potentiam servili supplicio expiavit. *Tacit. Hist. lib. 4. cap. 11.*

† *Valer. Max. lib. 2. cap. 7. De Discipl. Milit.*

‡ *Liv. lib. 30. fine.*

L

into

74 *Of the Roman*

into their own Bowels? But it was used in the Army, in extraordinary Cases only, and for Crimes of a transcendent nature. Therefore *Avidius Cassius* is highly blamed for Crucifying certain Officers, because they had attack'd the Enemy without Orders: For tho' Antiquity would have born him out, by the Example of * *Torquatus* and some others, who did not spare their own Children and Relations when they disobey'd Command; yet the Romans had long since receded from that extreme Severity in their Discipline; and the Example of † *Corbulo* might have taught him

* *Posthumius Dictator. Manlius Torquatus. Livii lib. 4. § 8.*

† *Præfectos militesque omnes extra Vallum tendere iussit. Tacit. Annal. 13. cap. 36.*

more

Military Punishments. 75

more Humanity, who on a like occasion, only enjoyn'd the Officers and Soldiers to undergo the Infamy of *Pitching their Tents without the Camp.*

* *Vulcatius* gives this as an Instance of the Emperour's cruel Disposition : And both he and † *Opilius Macrinus* are by Historians heavily censur'd for punishing their Soldiers in this *barbarous and servile* manner.

The *Cross*, being by the Emperour † *Constantine*, in honour of the *Christian Religion*, ordered no longer to be used as a Punishment, the *Furca* succeeded

* Multa extant Cruditatis potius quàm Severitatis ejus indicia ; nam primum milites qui provincialibus aliquid tulissent per vim in illis ipsis locis in quibus peccaverant in *Crucem* sustulit. *Vulcatius, cap. 4.*

† *Capitolinus in Vit. Opilii Macrini, cap. 12.*

‡ *Cujacius Observ. 16. 1.*

in its place ; which, according to * *Lip-
sus*, was of two kinds, the *Old* and
the *New* ; but the latter not falling
within the Design of this Treatise, I
shall say nothing more of it. The
Old Furca is so called, from being in
use only among the *Antient Romans*,
who divided it into *Penalis* and *Ig-
nominiosa*. The Shape of it is very
much disputed : Some Authors say,
it was a forked Piece of Timber re-
sembling the Beam of a Wayne like
our Letter Y ; others give it another
Form. Be that as it will, all agree,
that the *ignominious Furca* was a Punish-
ment for *Servants convicted of small Of-
fences*, who were forced to carry it upon
their Shoulders about the City, expo-

* *Vide Justi Lipsii lib. De Cruce.*

Military Punishments 77

fed to the Mockery and Derision of all that saw them. The * *Penal Furca*, was, when the *Malefactor* having it on his Neck, was led up and down the *Circus*, or other Publick Place, being whipp'd all the way till he died under it, or was released and sold for a Slave, like *Mattiennus*, for † deserting the Army in *Spain*: But this Punishment was suppress'd, as ‡ *Gotbosedus* says, first, by the Law *Valeria*, and afterwards by the Law *Porcia*.

Another way of punishing *Deserters* and *Fugitives* among the *Romans*, was

* Nudi hominis Cervicem inferi Furcæ, corpus virgis ad necem cædi. *Sueton. in Vita Neronis, cap. 49.*

† Qui accusatus apud Tribunos, quod exercitum in Hispaniâ deseruisset damnatusque sub Furcâ diu Virgis cæsus, & sestertio nummo vèniit. *Liv. Epit. lib. 55.*

‡ *Dig. Tit. De Pœnis, Leg. 8. §. 22.*

burning

78 Of the Roman

burning them alive. * *Hostes autem, item transfugæ, ea pœna adficiuntur ut vivi exurantur.* But because by the Law of Nations, Enemies, when taken, are to be preserved, and not destroyed, much less in so cruel a manner, † *Cujacius* corrects this Passage; and instead of *Hostes autem item transfugæ*, makes it *Id est transfugæ*. However, ‖ *Gothofredus* thinks, that Place wants no Amendment; because by the Word *Hostes* all Traytors that plot, or endeavour the Subversion of the Government, are understood, and are a distinct kind of Enemy, who by the Laws are to be burnt alive,

* *Cujacius* *Observ.* 6. *Observ.* 27.

† *Gothofred.* *ad Leg.* 1. *Cod. Theod. Tit. De Re Milit.*

‖ *Gothofr.* *ad Leg.* 8. §. 3. *Dig. Tit. De Pœnis, Lit. E.*

Military Punishments. 79

as well as *Deserters* or *Fugitives* from the Army. Such also who conceal'd or assisted *Deserters* in their Escape, or * any that were fit to bear Arms, were condemned to the Flames.

* Actor ejus fundi in quo alienigena, vel idoneus militiae, vel ante jam traditus latuerit, ultima flammarum animadversione consumatur. *Leg. 2. Cod. Theod. De Desertoribus.*

Si quis latebram præbuerit desertori possessionis in qua latuerit amissione multatus, etiam graviolem sententiam pertimescat. Porro Actorem flammis subjiendum esse non dubites. *Leg. 4. eod.*

CHAP.
to



C H A P. VIII.

Hitherto, of the *Capital Roman Military Punishments*, which were either *Common* or *Proper*, and reached the *Natural Life* of the Offender. Among which, I have not enumerated several inflicted by the latter Emperours; being rather the Effects of their boundless Power and cruel Dispositions, than proportioned

to

Military Punishments. 81

to the * nature of the Crimes, or design'd to dispose Men to Obedience. Of this kind, was that Piece of Barbarity of † *Aurelian*, who commanded one of his Soldiers convicted of *Adultery*, to have his † Feet tied to the Tops of two Branches of Trees bent down, which being suddenly let fly, tore the Offender to pieces. And *Opilius Macrinus* ordered a ‖ *Tribune*, who had suffered his Guards to desert a Post,

* Illa supplicia non ex merito facinorum irrogantur, sed ex libidine ejus qui irrogat quique suis tristissimis moribus indulget. *Salmas. ad Jul. Capitolinum in Opilio Macrino, cap. 12.*

† *Wopiscus in Vit. Aurelian, cap. 7.*

‡ This Punishment was not of the Emperour's Invention; but *Casaubon* says, came from Persia. It is called, *Diasphendonefis*. Vide *Montfaulcon's Antiq. Vol. 4.*

‖ *Tribunum qui excubias deserui passus est, carpento mortali superadnexum per totum iter vivum atque exanimem traxerit. Capitolinus in Vit. Opilii, cap. 12.*

M

to

82 Of the Roman

to be bound fast to the Top of a Waggon, and carried so a whole Day's March. The same Emperour being informed, that Two Soldiers had de-flower'd their Landlord's Servant-Maid, immediately caused the Bellies of two Oxen to be ripp'd open, out of which the Paunches were taken, and then the Soldiers few'd alive in them, the Heads of the Oxen being cut off, that so the miserable Couple might speak to one another as long as their Agony suffered them to live. A Punishment, says * *Capitolinus*, known neither to the Antients nor Moderns, even in Cases of

* Quum ne *Adulteriis*. quidem talia apud Majores, vel sui temporis essent constituta supplicia. *Capitolinus* in *Vit. Opilii*, cap. 12.

Military Punishments. 83

Adultery. But, not to dwell on so disagreeable a Subject, I shall proceed to consider those *Military Punishments*, which affected the Offender's *Liberty*, his *Rights* as a *Citizen*, or his *Body* by *Mutilation*.

M 2 CHAP.



W. Heyrick del. et fecit.

C H A P. IX.

THE First of these is *Slavery*, *Servitus*, so called, not à *servi- viendo* from *serving*, as some have imagined ; but *servando*, *saving*, or *preserving*, as *Justinian* says ; because the Roman * *Emperors* were used to preserve and sell,

Servi autem ex eo appellati sunt quod Imperatores captivos vendere, ac per hoc *servare*, nec occidere solent. *Justin. Instit. lib. 1. Tit. 3. De Jure Personarum.*

not.

Military Punishments. 85

not to destroy such as they took Captives in War. It was introduced by the † *Law of Nations*, and very much cultivated by the *Romans*.

A *Freeman* might be reduced to the State of *Slavery* several ways. *Justinian* furnishes us with one Example, in a Person, who being under Age, suffers himself to be * sold into Bondage for the sake of sharing the Money. To which may be added, the Case of enfranchised Persons, who turned un-

† *Servitus autem est constitutio Jurisgentium. Justin. eod.*

* *Cum liber homo major xx annis ad pretium participandum sese venundari passus est. Eod.*

Si manumissus ingratus circa Patronum suum extiterit, & quâdam jactantiâ vel contumaciâ cervicem adversus eum erexerit, aut levis offensæ contraxerit culpam, à Patrono rursus sub imperium ditionemque mittatur. Cod. lib. 6. Tit. 7. De Libert. & eorum Liberis. Leg. 2.

grate-

86 Of the Roman

grateful to their Patrons. Thus the Emperour † *Claudius* condemned those of whose Ingratitude their Patrons complained, to their former Servitude; refusing to give Sentence against those who had enfranchised them when their Advocates applied for it. But notwithstanding this be generally spoken by *Suetonius*, *Casaubon*, upon the Authority of a Law in the *Digest*, limits it to One Case only; that is, when they became *Informers themselves*, or *suborned Others to be so* against their *Patrons*. The *Laws*, however, make no such distin-

† Ingratos & de quibus Patroni quererentur revocavit in servitutum advocatisque eorum negavit se adversus Libertos eorum Jus dicturum. *Sueton. in Vita Claudii, cap. 25.*

ction ;

Military Punishments. 87

tion ; but condemn them and their Children , altho' they were in the * *Military Service*, to their pristine Condition of *Slavery*. But this was not the only Fault for which Soldiers suffered that Punishment. All that were *ungrateful* to their *Country* and the *Government* which protected them, by refusing to † *answer to their Names*, or *appear at the Muster upon Levies*, were sentenced as *Traytors* to the *Publick Liberty*, to pass the rest of their *Lives in Slavery*, and some even after

* *Libertinae conditionis homines vel earum filii etiam si MILITANTES qui docebuntur ingrati, ad servitutis nexum proculdubio reducentur. Cod. lib. Lig. 2. Tit. De Libert. § eorum Liberis.*

† *Gravius autem delictum est detrectare munus militiae quam adpetere : nam & qui ad delectum olim non respondebant ut proditores Libertatis in servitutem redigebantur. Dig. lib. 49. Tit. 16. De Re Militari, Leg. 4. Sect. 10.*

88 Of the Roman

long Service, were for heinous Crimes sold and made Slaves, as I have before instanced in *Martianus*. When *Fulvius* a Tribune, had taken upon him in his turn of Duty, to discharge a whole Legion, *Posthumus*, another Tribune of the same, gave account of it to the Senate; and pursuing the Men that were dismiss'd, brought several of them back; the rest were recalled by an Order, and the * *Consul* had a Warrant from the Senate to put to Sale every Man that did not return, with all that he was worth. † *Lampri-*
dus reports of the Emperour *Alexander Severus*, that hearing, a young Soldier

* *Livii lib. 40.*

† *In Vita Alex. Severi.*

Military Punishments 89

had injured a poor Woman in stealing from her some Goods, he commanded him to be *disarmed, declared a Slave,* and given to the Woman to gain her a Livelihood by his Drudgery. A Roman * Knight having cut off the Thumbs of his two Sons, that they might be incapable of serving in the Army, Augustus order'd him and his Goods to be sold ; and when he saw the Slave-jobbers greedy of the Purchase, with a design of releasing him again for Money, he gave him to his manumitted Slave, that he might be sent into the Countrey to live

* Equitem Romanum quoddam duobus filiis adolescentibus causa detrectandi Sacramenti pollices amputasset ipsum bonaque subjecit hastæ ; quem tamen quod imminere emptioni publicanos videbat, liberto suo addixit, ut relegatum in agris pro libero esse fineret. *Sueton. in August. cap. 24.*

90 Of the Roman

free. But we must remember to distinguish between *Hominum Servi*, and *Pœnæ Servi*; such as were in a State of Bondage, and obliged to serve others in carrying on their domestick or other lawful Affairs; and such as were condemned to work in the * Mines, or the High-ways, from which *Soldiers* were by the † Laws exempted.

Before I leave this Chapter, it may not be amiss to take notice, that it was a common thing with the *Romans*, whatever is said of their Bravery, to disqualifie themselves for Military Service, by cutting off their *Thumbs*; and

* Ad metallum, aut ad viarum munitiones. *Sueton. in Calig. cap. 27.*

† *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 1.*

therefore

Military Punishments. 91

therefore † *Ammianus Marcellinus* speaking of the Dispositions and Manners of the *Gauls*, says, that none of them ever cut off their *Thumbs* to make themselves incapable of Military Duties as the *Italians* had done ; and accordingly there were several Laws made by the *Romans* to restrain such Cowardly Practices. * *Trajan* made one, That the Person who disabled his Son when any Levy was made for War, so that he could not be fit for Military Service, should be banished. And

† Nec illorum quisquam ut in Italiâ munus Martium extimescens pollicem sibi præcidit quos joculariter *Murcos* appellant. *Ammian. lib. 15. sub fine.*

* Eum qui filium debilitavit delectu per bellum indicto, ut inhabilis militiæ sit ; præceptum Divi Trajani deportavit. *Dig. Lib. 49. Tit. 16. De Re Milit. Leg. 4. §. 12.*

92 Of the Roman

there is another of * Constantine's ex-
tant to this purpose: That the Sons
of Veteran Soldiers fit for the service
of the War, some of which have refused
to lift themselves out of Sloth and La-
ziness, and others have been so cowardly
as to maim themselves only to avoid that
Duty; if they be thought incapable to
serve in the Army, shall be forced to at-
tend the most servile Offices about the
Court. He that thinks to excuse himself,
from bearing Arms, by cutting off his
own Fingers, shall not escape what he
designed to avoid by it; but shall with
that Mark of Infamy, be forced to un-
dergo the Drudgery of the Service, since

* Si ad Militiam inutiles resectis digitis judicentur
curialibus numeribus atque obsequiis adgregari. Cod.
Theod. Leg. 1. Tit. De Filiis Milit. apparat. & ver. Et De
Tyronibus, Leg. 4. 10.

Military Punishments. 93

he refused the Honour of it. But the severest Law against these Cowards, is that in the Digest; If any one, to avoid being press'd for the War, bath, as he thinks, secured his Body from Danger, by cutting off his Fingers, he shall be condemned to be burnt; and the Master that doth not hinder him, shall incur a severe Penalty. But from the Close of this Law, 'tis likely it was designed only against Slaves, who upon sudden Emergencies were allowed to carry Arms. The other Laws comprehended Freemen. These pusillanimous Fellows were, by way of Ridicule, called *Murci*. And some learned Men have thought, that our Modern French Word *Poltron* comes from this *Pollicum truncatione*, cutting off the Thumbs.

But

94 Of the Roman

But Monsieur * *Menage* and † *Puffendorf* likewise, seem to be of opinion, it is rather derived from the *Italian* Word *Poltro*, which signifies a Fellow that indulges himself at home upon his Couch. However, 'tis not to be disputed that the *Italian* had its Original from these *Pollicum truncatoribus*, as exactly describing, and agreeing with the Character they deserve.

* In Origin. Ling. Franc.

† *Puffendorf*. Translat. Book 8. cap. 2.

CHAP.



CHAP. X.

Banishment, in Latin *Exsilium*, *ab ex & solo*, is properly the Change of a Man's Place of Abode or Countrey, by way of Punishment ; such as had transgress'd the Laws, being commanded to leave their Countrey, and go to some other. Hence is the Greek Proverb $\gamma\acute{\iota}\nu\ \pi\epsilon\acute{\rho}\ \gamma\eta\varsigma$, *terram pro terrâ*. There were two sorts of Banishment among

96 Of the Roman

among the Romans, the *Voluntary* and the *Necessary*: But the First being rather a wise and timely * Retreat, and the free Choice of the Person, who left his Countrey to avoid the possible Severity of a formal Sentence of *Banishment*, is scarcely to be called a *Punishment*, nor is it to my purpose.

The *Necessary* or *Forced Banishment* here spoken of, was of three kinds; either from † *certain Places*, or from *all*; which latter was called *Latafuga*, or to *one only*. Concerning which

* Hic enim timens ne postea privato sibi eadem illa cum bonorum amissione additaque alia insuper ignominia acciderent, abdicavit se Consulatu rebusque suis omnibus Lavinium translati civitate cessit. *Liv. lib. 2.*

† Aut certorum locorum interdictio, aut *Lata fuga* ut omnium locorum interdicatur, aut in insulæ vinculum, id est, relegatio. *Marcianus l. 5. d. De Interdict. & Releg.*

there

Military Punishments. 97

there is great variety of Opinions among the *Lawyers*.

Persons of all conditions, as well *Men* as *Women*, were liable to this Punishment, as * *Suetonius* and *Ovid* both testify. But, to bring it home to the Point in hand, *Livy* tells us, that the Remains of the Army after the Battel of *Cannæ* were all banish'd to *Sicily*, there to continue as long as the War lasted in *Italy*. And *Ammianus Marcellinus* relates, that † *Romanus* and *Vincentius*, both *Tribunes*, were sent into Banishment for aiming at Matters above

* *Sueton. in Vita Augusti, c. 55. Ovid. Trist. 1. 1. Ver. 193.*

† *Vide Fabrum in Semestr. 11. cap. 5.*

‡ *Romanus quinetiam & Vincentius Scutariorum scholæ, primæ secundæque Tribuni agitasse convicti quædam suis viribus altiora, acti sunt in exilium. Ammian. Marcell. lib. 22.*

O

their

98 Of the Roman

their spheres. When *Julius Cæsar's* Army was dejected, at the Report of the vast Number of *Juba's* Forces, he spake to them to this effect: *Be * assured the King will be with us in a short time; therefore let none among you take upon them to mutter or argue about it; but believe what I say, or else I shall certainly take care to have them shipp'd in some old shatter'd Vessel, and commit them to the Mercy of the Winds and Waves.* But this kind of Banishment was more frequently used in their Naval Service, as † *Schefferus* instances out of *Strabo*.

* *Suetonius in Jul. Cæsar, cap. 56.*

† *Schefferus de Milit. Naval. Vet. 4. c. 2.*

Military Punishments. 99



CHAP. XI.

Breaking of the *Legs* was a Roman Punishment for *Slaves* and Persons of inferiour Degree. *Thallo*, by Command of * *Augustus*, had his *Legs* broken, for discovering the Contents of a Letter, for a Sum of Money;

* *Sueton. in Vita August. cap. 67.*

100 Of the Roman

yet 'twas sometimes inflicted upon *Freemen*, and those too of the First Rank. Thus *M. * Marius* in whose honour the *Romans* erected several Statues in their Streets, had his *Legs* broken by Order of *L. Sylla* : And † *Ammianus* tells us of certain Soldiers, who met with the same Fate for not following their proper *Ensigns*. In exacting which Punishment, I mean *Mutilation*, the *Romans* generally observed this Rule, of making the Parts suffer most, which were principally concerned in the Offence ; as, by cutting off the *Hands* of such as were guilty of *Forgery*, *castrating* *Adulterers*, and

* *Seneca de Ira*, 3. cap. 18.

† *Ammianus*, lib. 23.

Military Punishments. 101

the like. So *Fugitives* were condemn-
ed to have their *Legs cut off*, that their
Punishment might be more conspicu-
ous. *Avidius Cassius* condemn'd many
Deserters to have their *Hands* and
Legs cut off, giving this reason for it,
* That the living miserable Example
of an Offender was of greater service
than that of his Death. *Vulcatius*
Gallicanus says in the same Emperour's
Life, that he was the Inventer of
cutting off the *Hands* and *Legs* of *De-*
serters. But *Valerius Maximus*, under
the Head of *Military Discipline*, shews,
that † *Fabius Maximus*, who comman-

* Multis Desertoribus manus excidit ac poplites, di-
cens majus esse exemplum viventis miserabiliter crimi-
nosi quàm occisi, &c. *Liv. lib. 25.*

† Omnium qui ex præfidiis Romanorum ad hostes
transfugerant, captique erant, manus abscidit ut truncâ
præse brachia gestantes metum defectionis reliquis in-
jicerent. *Valer. Max. lib. 2. cap. 7.*

yet 'twas sometimes inflicted upon *Freemen*, and those too of the First Rank. Thus *M. * Marius* in whose honour the *Romans* erected several Statues in their Streets, had his *Legs* broken by Order of *L. Sylla* : And † *Ammianus* tells us of certain Soldiers, who met with the same Fate for not following their proper *Ensigns*. In exacting which Punishment, I mean *Mutilation*, the *Romans* generally observed this Rule, of making the Parts suffer most, which were principally concerned in the Offence ; as, by cutting off the *Hands* of such as were guilty of *Forgery*, *castrating* *Adulterers*, and

* *Seneca de Ira*, 3. cap. 18.

† *Ammianus*, lib. 23.

Military Punishments. 101

the like. So *Fugitives* were condemn-
ed to have their *Legs cut off*, that their
Punishment might be more conspicu-
ous. *Avidius Cassius* condemn'd many
Deserters to have their *Hands* and
Legs cut off, giving this reason for it,
* That the living miserable Example
of an Offender was of greater service
than that of his Death. *Vulcatius*
Gallicanus says in the same Emperour's
Life, that he was the Inventer of
cutting off the *Hands* and *Legs* of *De-*
serters. But *Valerius Maximus*, under
the Head of *Military Discipline*, shews,
that † *Fabius Maximus*, who comman-

* Multis Desertoribus manus excidit ac poplites, di-
cens majus esse exemplum viventis miserabiliter crimi-
nosi quàm occisi, &c. *Liv. lib. 25.*

† Omnium qui ex præfidiis Romanorum ad hostes
transfugerant, captique erant, manus abscidit ut truncâ
præse brachia gestantes metum defectionis reliquis in-
jicerent. *Valer. Max. lib. 2. cap. 7.*

102 Of the Roman

ded the Roman Army against *Hanibal* above three hundred Years before, cut off the Hands of all that had deserted from the Roman Garrisons to the Enemy, as soon as they were retaken, that so by the miserable Spectacle of their mangled Limbs they might infuse into their Comrades an Abhorrence of the like Crime. We find also in * *Frontinus*, this was the Punishment of such as robb'd or stole any thing from their Fellow-Soldiers, unless by way of Favour, they were only sentenced to have a Vein opened in *principiis*, that is, at the Head-Quarters; Which being the Repository of their

* *M. Cato memoriae prodidit, in furto comprehensis, inter commilitones dextras esse præcisas, aut si lentius animadvertere voluissent, in principiis sanguinem missum. Frontin. Stratagemat. 4. 1.*

Camp,

Military Punishments. 103

Camp, Deities, Eagles and other Ensigns were accounted sacred, and, as * *Festus*, and after him *Lipsius*, will have it, the Place where Military Punishments were for the most part exacted. But † *Cuperus* startles at the Impiety, and will by no means be induced to believe the *Romans* could be so wicked as to affront their Gods with so filthy a Spectacle: Yet he allows, *Punishments of Shame* were inflicted there in the sight of the *Tribunes, Centurions* and *Guards*. This Difficulty is solved by ‡ *J. Perizonius*. In the *first Ages*,

* *Festus in V. principalis porta.* Atque ibidem locorum pleræque exactæ poenæ militares. *Lipsius de Milit. Rom. Lib. 5. Dial. 18.*

† *Grisb. Cuperus Observ. l. 4. c. 19.*

‡ *Jac. Perizonius Diff. 1. § 23. & seqq.*

says

104 Of the Roman

says he, *common Soldiers* that had offended capitally, were punished *within* the *Camp*, as *Malefactors* were in the *Comitium* at *Rome*. But when Publick Examples grew to be more frequent, and thereby the Benefit expected from them abated, the Place of Execution was removed from the *Inside* to the *Outside* of the *Camp* and *City*.

CHAP.

CHAP. XII.

Letting of Blood is a Military Punishment taken notice of by *Frontinus* and likewise by † *Anlus Gellius* ; who not being able otherwise to account for the Reason of it, imagines it was first introduced by way of Remedy for those that were overstock'd with Blood, or any ways lethargically inclined ; and herein he is followed by many of the ‡ Learned, amongst whom is * *Alexander ab Alex-*

† *Gellius Noct. Attic.* 10. 8.

‡ *Faber Semestr.* 1. 17.

† *Alex. ab Alex. Gen. Dier.* 11. 13.

P

andro ;

106 Of the Roman

andro ; because, say they, the Animal Spirits are clogg'd by a Superfluity of Blood ; which being drawn off, are restored to their Motion, and the Patient to the free Exercise of his Reason. But how can it be thought, the Romans studied the *Principles of Physick* in the Execution of their Military Punishments ? * *Muretus* contradicts *Gellius*, and thinks, it was rather That such as were unwilling to *sacrifice* their Blood in the *Defence of their Countrey*, should be compelled to lose it with *Shame* and *Dishonour*. But, says *Lipsius*, how could that be, when *Thieves*, who were under no such Obligation, were punish'd after the same manner ?

* *Muretus Var. Lect. 13.*

Military Punishments. 107

To this it is answer'd by *Thysius* in favour of *Muretus*, that originally it was a *Military Punishment*, tho' afterwards applied to Crimes against the *Civil Government* : And he resolves the reason of it into this, That such as were sparing, or fearful of shedding the *Enemy's Blood*, should be condemn'd to pay for it by a disgraceful Loss of their own. * *Valtrinus* concurs with *Thysius* ; and *Gronovius* in his Edition of *Aulus Gellius*, seems to think, it was once the only Punishment of Disgrace used in the *Roman Armies* : So that it grew a Proverb, *Dandum esse invidie sanguinem* ; and by the Invention of other Marks of Infamy, at length became

* *Valtrinus lib. 6. cap. 8.*

108 *Of the Roman*

peculiar to the Case of *Cowardice* and *Fear*. But, says *Sichterman*, since every one is at liberty to speak his mind, I confess, the Reason which *Lipsius* gives, seems to me to have most Weight in it, viz. *That it was done in token of some greater Punishment incurr'd, the extremity whereof being remitted, was still express'd and figur'd out by the Effusion of a little Blood, as we turn Delinquents out of the Service with a Rope about their Necks, to shew they deserv'd to be hanged.*

CHAP.



CHAP. XIII.

THE two kinds of *Beating*, viz. *Fustigatio* and *Castigatio* are sufficiently explained in the Chapter treating of the *Fustuarium*. I come now to speak of the other sort of *Castigation*, distinguished by the Name of *Fustum Admonitio*; which, as is shewn before, differs widely from the *Fustuarium*, and is a far less Punishment

110 Of the Roman

Punishment than *Flagellatio*, or *Whipping*. And tho' it has been already said, that the *Castigatio* was executed with *Rods*, it must be taken in a general sense: For when *Soldiers* were condemned to suffer it, they used *Sticks* or *Cudgels*, and not * *Rods* or *Scourges*; which were seldom given to a Soldier, unless Beheading was to ensue: Tho' there are some Instances of *Whipping* being followed with † *Degradation*.

* *Virgarum contumeliosa verbera. Valerius.* Et raro etiam in militia legas, raro inquam, nisi ubi mors à securi consecuta, & hæc solenniter tunc præverunt. *Lips. de M. R. lib. 5. Dial. 18.*

† Jam C. Cotta, P. Aurelium Pecuniolam sanguine sibi junctum quem obsidioni Liparitanæ ad auspicia repetenda Messanam transiturus præfecerat Virgis cæsum gregalis militiæ munere inter pedites fungi coegit, quod ejus culpa agger incensus & pene castra fuerant capta. *Valer. Max. lib. 2. c. 7.*

Their

Military Punishments. III

Their *Battoons*, *Sticks* or *Cudgels*, were of different Materials; as *Oak*, *Elm* or *Beach*; but those used upon *Soldiers* by way of *Admonition*, were of the *Vine-Tree*, which, to use * *Pliny's* Words, grace the Punishment, and therefore were reserved for the Backs of *Natural-born Romans*. When any Soldier, says *Livy*, speaking of *Scipio's* Reformation of the Army, was discovered † stragling upon the March, if a *Roman*, his Punishment was, to be corrected *Vitibus*, with *Vine-Twigs*; if a *Foreigner*, *Fustibus*, with *Cudgels* of any kind. This Use of the *Vine* is frequently to be met with in the

* *Pœnam ipsam honorat. Plin. Hist. Nat. l. 14. c. 1.*

† *Quem militem extra ordinem deprehendit, si Romanus esset, Vitibus; si Extraneus, Fustibus cecidit. Livius, lib. 57.*

Roman

112 Of the Roman

Roman Authors. And tho' Sigonius in his Notes upon this Passage of *Livy* corrects the old Reading, and says instead of *Virgis*, it ought to be *Fustibus*; yet he cannot thereby intend the *Fustuvarium* described by *Polybius*; because that ended in the Death of the Transgressor: Which was manifestly otherwise in this Case; the only difference in this Punishment being, that one was beaten *Vitibus*, the other *Fustibus*. Now, there is no Historical Evidence, that a Roman Soldier was ever *beaten to death* with the *Vine*. *Polybius*, indeed, touches upon the *Castigatio*, but 'tis very slightly; he says no more, than that the *Tribunes* had a Right of *beating*; and confounds the Correction given by

the

Military Punishments. 113

the *Vine*, with the *Fustuarium*. * *Cotereus* falls into the same Errour, and produces indiscriminately, Examples of both these kinds of Punishment.

The giving of this Correction properly belonged to the *Centurions*: Whence † *Tacitus* tells a Story of one, whom the Soldiers had nick-nam'd *Cedo alteram*, Give me another; because when he had broken one *Vine-Wand* upon the Soldier's Back, his manner was to call aloud, Give me another, and when that was broken, another, Hence we learn, that the *Vine-Wand*

* *De Jure & Privilegiis Milit. lib. 3. cap. 17.*

† Centurio, Lucilius interficitur cui militaribus facetiis vocabulum *Cedo alteram* indiderant, quia fractâ Vite in tergo militis, alteram clarâ voce, ac rursus aliam poscebat. *Tacit. Annal. 1. cap. 23.*

Q

was

114 Of the Roman

was the *Centurion's Ensign* of *Distinction*; and so it is taken by the *Scholiast* upon *Juvenal*; who in Explanation of this Passage, — *Vitem posce libello*, has this Paraphrase, *Id est, ut Centurio fias, da Libellos*; that is, *Prefer a Petition to be made a Centurion*: For such as had the Privilege to carry the *Vine*, were *Centurions*; and the Office it self is often express'd by the Word *Vitis*, in *Spartianus*, *Tacitus*, *Martial* and *Lucan*. Sometimes it was given as our *Signs Manual* are, to *secure the Reversion of an Employment upon Death or Dismission.

* *Casaubonus ex Eusebio. Vide Sichterian De Panis Militaribus, cap. 12.*

Among

Military Punishments. 115

Among many other Offences corrected this Way, was * *Negligence in obeying lawful Commands*, † *Loitering behind*, and *stragling upon the March*.

† Centurionum in manu Vitis, & optimo præmio tardos ordines ad lentas aquilas perducit, atque etiam in delictis pœnam ipsam honorat. *Plin. Nat. Hist. lib. 14. cap. 1.*

† Nodosam posthæc frangebatur vertice Vitem
Si lentus pigramuniret castra dolabra.
Juven. Sat. 8, v. 48.



C H A P. XIV.

I Come now to speak of Punishments attended with *Infamy*, of which the *Missio ignominiosa*, or *shameful Discharge* was the Chief.

The Romans had Four Ways of Dismissing Men from the Service. The first was, When they had served out their time appointed by the
* Law,

Military Punishments. 117

* *Law*, and this was called *Iusta Missio*. The second was, for good and sufficient Reasons; as, when the Party was wounded, lame, or so infirm, that he could not serve longer: This they called *Missio causaria*, an occasional Dismission. The third was, When Men were turned out of the Army for Crimes; and this they called *Missio ignominiosa*, a shameful Dismission. † *Lipsius* adds the Fourth: Which was, When a General

* Quia Lege certus annorum numerus definitus, nec sumere aut ponere militiam volentibus erat. *Lips. De Milit. Rom. lib. 5. Dial. 19.*

† *Missionum generales causæ sunt tres; Honesta, Causaria, Ignominiosa. Honesta est, quæ tempore militiæ impleto datur. Causaria, cum quis vitio animi vel corporis minus idoneus militiæ renunciatur. Ignominiosa causa est, cum quis propter militare delictum sacramento solvitur. Dig. Lib. 49. Tit. 19. De Re Milit. Leg. 13. §. 3.*

‡ *Lib. 5. De Milit. Rom. Dial. 19.*

OF

118 Of the Roman

or Tribune gave a Soldier his Discharge out of Grace and Favour. And * Sir Charles Turner says, sometimes for Money: But this, as illegal and prejudicial to the Service, was often rescinded by the *Censors*. But as it was always considered as part of the † Power and Privilege of a General to discharge whom he thought fit. ‡ Ulpian allows this Discharge out of Favour, to be *Honesta Missio*, when it is done without Reward or prospect of private Gain.

* *Pallas Armata*, Book 2. Ch. 24.

† *Missorum quoque causas sese cognituros esse, & quorum ante emerita stipendia gratiosa Missio sibi visa est eos milites fieri iussuros. Liv. lib. 43.*

‡ Multa genera sunt Missionum, *Honesta*, quæ emeritis stipendiis, vel antè ab Imperatore indulgentur. *Digest. lib. 3. Tit. 2. De his qui notantur infamia, Leg. 2. §. 2.*

To

Military Punishments. 119

To return to the *ignominiosa Missio*, which alone relates to my Design. * *Macer* defines it to be, when a Man for a Crime committed, is discharged of his Military Oath. He says nothing of the Words *ignominie causâ*, which † *Ulpian* thinks absolutely necessary, and that no Soldier ought to be turned out of the Service, without mentioning the Cause of his Dismission. Yet *Ulpian* in the same Law admits, there is no occasion of that Addition, provided he be stripp'd of his Arms and all

* *Cum quis propter militare delictum sacramento solvitur. Dig. lib. 49. Tit. 16. De Re Milit. Leg. 13. §. 3.*

† *Ignominiosa autem missio toties est quoties is qui mittitur, addit nominatim IGNOMINIE causâ se mittere; semper enim debet addere cur miles mittatur. Sed si eum exauctoraverit, id est, insignia militaria detraxerit, inter infames efficit licet non addidisset IGNOMINIE causâ se eum exauctorasse. Dig. lib. 3. Tit. 2. De his qui notantur infamia. Leg. 2. §. 2.*

Badges

120 Of the Roman

Badges of Military Honour taken from him. There are Instances to be brought of both kinds, which, for the clearing of this Point, may not impertinently be inserted here, * *Publius Rutilius*, in the War he made upon the Fugitives in *Sicily*, dismissed his Son-in-law for suffering a Place of Strength to be lost by Negligence. And *Cæsar* in *Africa* discharged † *Fontei*, because he was *seditions* and a *bad Citizen*. There is no mention in either of these Cases, that they were

* *P. Rutilius* Consul eo bello quod in *Siciliâ* cum fugitivis gessit. Quintum Fabium generum suum, quia negligentia *Taurominitanam* arcem miserat, provincia iussit decedere. *Valer. Max. lib. 2. cap. 7. De Disciplinâ Milit.*

† Itemque te *A. Fonte*, quod *Tribunus militum* seditiosus malusque civis fuisti, ab exercitu dimitto. *Hirt. de Bello African.*

turned

Military Punishments. 121

turned out of the Army *ignominie causâ*; yet 'tis not to be doubted, they were obliged to leave their Arms behind, and divest themselves of all Military Ensigns before they were sent away. Of the other kind, *Hirtius* gives us an Instance, in the *African * War*; where he describes *Cæsar* discharging *Avienus*; and after enumerating several Crimes of which he was guilty, saying to him, *Ob eas res IGNOMINIÆ causâ ab exercitu meo te removeo*: For those things I turn thee out of my Army with Shame.

* *Cæsar* postero die de suggestu convocatis omnium Legionum Tribunis Centurionibusque C. Aviene quod in Italiâ milites populi Romani contra Remp. instigasti, rapinasque per municipia fecisti; Ob eas res IGNOMINIÆ CAUSA, ab exercitu meo te removeo, hodieque ab Africâ abesse, & quantum potes proficisci jubeo. *Hirt. loc. cit.*

R

* *Sue-*

122 Of the Roman

* Suetonius also reports, that Caligula dismissed the Commanders of some auxiliary Forces *cum ignominiâ*, because they had not repaired to the Place of Rendezvous by the time appointed.

From these Instances 'tis plain, that not only private Soldiers, but Officers of all Degrees, were subject to this kind of Dismission : Nay, † Pomponius includes the General himself,

* Postquam castra attigit, ut se acrem & severum Ducem ostenderet Legatos qui auxilia serius ex diversis locis adduxerant, cum *IGNOMINIA* dimisit. Sueton. in *Vit. Calig. cap. 44.*

† Quod ait Prætor : Qui ab exercitu dimissus erit : Dimissum accipere debemus militem caligatum, vel si quis alius, usque ad Centurionem, vel Præfectum Cohortis, vel Alæ, vel Legionis, (vel Tribunum sive Cohortis sive Legionis) dimissus est. Hoc amplius, Pomponius ait, etiam eum qui Exercitui præest, licet Consularibus insignibus utitur *ignominia causâ*, ab Imperatore missum hæc notâ laborare. Dig. lib. 3. Tit. 2. De his qui notantur infamia, Leg. 1.

who

Military Punishments 123

who was accounted infamous, if dismissed from his Command in this manner. Nor could there be a more grievous Punishment inflicted upon Men of Spirit : For it was generally attended with *perpetual Banishment* from the † *Army* and *Court*, unless the Sentence made it ‡ *Temporary* ; and then the *Infamy* vanish'd upon the Expiration of the time limited.

This *ignominious Dismission* is in the *Lawyers* and *Historians* frequently express'd by the Word *Exauctoratio* ; and it seems to be the true Meaning

† Et is qui *Ignominia* missus est, neque *Romæ*, neque in sacro Comitatu agere potest. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 13. §. 3.*

‡ Quibus posthac ordini suo vel advocacy ad tempus interdicetur post impletum temporis spatium non progabatur infamia. *Cod. lib. 10. Tit. 59. De his qui in exsil. Leg. 1.*

124 Of the Roman

thereof, notwithstanding † *Lipsius* confines it to another Sense ; that is, *When a Legion was disbanded, yet not dispersed, but kept together under their proper Colours, till they had Lands set out, or other Rewards given them for their long Service ;* During which Expectation they were exempted from all kind of Duty, except Fighting against the Enemy. It is not to be disputed, but that *Exauctoratio* does likewise include this Case, and that by *Exauctorati*, we are often to understand *Subsignani Veterani* & *Vexillarii* ; yet according to ‡ *Suetonius*, *Ulpianus* and many others, this is not its proper

† *Lipsius, De Milit. Roman. lib. 5. Dial. 19.*

‡ *Widend. Turneb. advers. lib. 2. cap. 3.*

signification :

Military Punishments. 125

signification : For excepting a few Examples, which prove its meaning to be as *Lipsius* and * *Valtrinus* explain, all the rest evidently relate to the *Ignominious Dismission*. Thus † *Ulpian* uses *Exauctorare*, for *Insignia militaria detrabere*; and he is said to be ¶ *exauctoratus*, *qui militia remotus castris ejicitur*, Who is discharged of the service, and turned out of the Camp. And ‡ *Lampridius* in the Life of *Alexander Severus*, He was so severe, that sometimes

* *Valtrinus*, lib. 6. cap. 8.

† Sed & si eum *exauctoraverit*, id est, insignia militaria detraxerit, inter infames efficit. *Dig. lib. 3. Tit. 2. De his qui notantur infamia. Leg. 2. §. 2.*

¶ *Dig. lib. 40. Tit. 12. De liberali causâ. Leg. 29. Pr.*

‡ Severitatis tantæ fuit in milites, ut sæpe Legiones integras *exauctoraverit*. *Lamprid. in Vita Alexandri Severi, cap. 52.*

126 Of the Roman

be dismiss'd (with Infamy) Whole Legions. * Suetonius says, *Augustus exauctoravit*, disbanded certain Cohorts, without giving them the Rewards of their long Service : But in this case there was no *Infamy* ; which is a third Signification different from both the former, applicable to the Word *Exauctoratio*. But we shall often find these Expressions, † *Cingulo privari, Matriculâ eximi, Sacramento solvi, & Exui*, used for *Exauctorare*, especially in the *Theodosian Code*.

It is observed from *Ulpian*, that on these occasions of *dismissing* with

* *Citra commoda emeritorum præmiorum exauctoravit Cohortes. In Vitâ Augusti, cap. 24.*

† *Vide Paratit. Gothofredi ad lib. 8.*

Infamy,

Military Punishments. 127

Infamy, the Offender was divested of his *Insignia militaria*, the Badges of his *military Profession*. * These in a *common Soldier*, were his *Arms* and *Armour*, in a *subaltern Officer* or *chief Commander*, both *Armour* and *Ensigns*, as also the *Belt* or *Girdle* with which they girt themselves about, in order to be the more disengaged and active against the Enemy; it being customary for the Romans, when they went about business, to shorten and gird up their Cloaths. Hence *cincti* is often used for † *Milites*, *Soldiers*, or Men of Activity, and *Discincti* for *Peasants*, or lazy sluggish Fellows. In like manner,

* Casaubonus ad Sueton. Augusti, cap. 24.

† Milites verò & fœderati qui eis post dilationem observaverint non solum MILITIA spoliabuntur, sed etiam ultima sustinebunt supplicia. Novel. 116. cap. 1.

128 Of the Roman

we shall frequently find * *Cingulum* to signify the same as *Militia*, and *converso*. Thus we read, such as employed themselves in private Service, were first *Militia*, i. e. *Cingulo spoliati*, deprived of their Place in the Army, and then put to death: So jealous were the *Romans* of their Soldiers applying that Time and Labour which they had devoted to the Service of the Publick, in prosecuting either their own, or other Peoples private Affairs.

* His quidem quibus indultum hactenus demonstratur quo binis aut ternis pluribusque mereantur CINGULIS, & seq. (ut dictum est) binis pluribusque MILITIIS. *Cod. lib. 12. Tit. 34. Qui Milit. possunt. Leg. 5.*



CHAP. XV.

THE taking away of the *Military Belt or Girdle*, spoken of in the foregoing Chapter, was sometimes Temporary, and made *Part* only of the Offender's Punishment, who was at the same time disgrac'd some other way, as * *Calpurnius Piso* punished *Titius*

* *Frontinus, lib. Stratagemar. 4. cap. 1.*

130 Of the Roman

an *Horse-Officer*, by commanding him to stand barefoot at the Head-Quarters from Morning till Night, with his Gown hanging about his Heels, and to abstain from going to *Baths* and *Enter-tainments*. *Suetonius* also mentions the Punishment of *standing before the General's Tent in a slovenly Dress*, wherein they were likewise upon some occasions obliged to *dig in the Trenches*, or *cut Hay*, as † *Plutarch* tells us, *Lucullus* served those that had run away, making them *throw up a Trench of twelve Foot deep in that Garb*, the whole Army all the while looking upon them. And sometimes they

† *Reversus Lucullus, eos qui ceperant fugam de more notavit, ac fossam pedum duodecim discinctos, assistente & spectante exercitu ducere jussit. Plutarch. in Lucullo, interprete Xylandro.*

were

Military Punishments. 131

were condemned to * stand before the General's Pavilion in the same Dress, with long Poles in their Hands, or Turfs upon their Heads, for a whole Day, and often bare-footed, that so being exposed in that deformed Condition to the View of the whole Army, their Punishment might be more conspicuous and exemplary.

* Pro cætero delictorum genere variis ignominiiis affect, ut stare per totum diem juberet ante Prætorium, interdum truncatos, discinctosque, nonnunquam cum decempedis, vel etiam cespitem portantes. *Sueton. in Vell. Augusti, cap. 24.*



CHAP. XVI.

ACCORDING to the Roman Method of Encamping, not only every Legion, but every Century and Decury, had a particular Spet of Ground assigned them to pitch their Tents in; which was laid out, in * proportion to

* Inde Legionibus locum suum dat & ostendit quâ formâ, prout plus minusve Legionum vel auxiliorum fuerit, Cohortes Legionariæ tendant. *Shelius ad Hyginum, pag. 1. & seq.*

the

Military Punishments. 133

the Number of Forces in the Army. But if any were convicted of an Offence, they were *ignominie causâ*, by way of Disgrace obliged to *change* their Quarters, and *remove* to some other Place, as if they were not worthy to associate with their old Comrades.

* Thus, the Soldier deputed to speak for the rest of the Army that were confined to Sicily, for running away at Cannæ, among other Arguments to shew the Hardship of their Case, mentions several Defeats the Roman Armies had received, and yet none of them were so severely punished. They, says he, had only their Arms changed for worse, their Rank in the Battel changed,

• Livius, lib. 25.

and

134 Of the Roman

and their Place in the Camp altered: Sometimes Offenders were condemn'd to lye without the Trenches of the Camp upon the bare Ground, exposed to the Insults of the Enemy. Thus * *Livy*; The Companies which had lost their Ensigns, were left on the bare Earth without the Rampiers, destitute of Tents or other Cover. In this manner the Soldiers that were overcome, and forced by † *Hanibal* to pass under the Yoke, upon their Return to the Army, were commanded by the Consul *Otatilius Crassus* to pitch their Tents on the Outside of the Camp, in order by that defenceless Situation, to inure them

* *Lib. 10.*

Frontinus, Stratagemat. lib. 4. cap. 1.

† *Lib. 2. cap. 7.*

Military Punishments. 135

to Danger, and create in them the Resolution they wanted. To this purpose see *Valerius Maximus* and * *Tacitus* ; where *Corbulo* orders *Pactius* and the rest of the Officers and Soldiers under his Command to take up their Quarters without the Camp. But this Disgrace was † Temporary, and continued no longer than the General pleased, or the Delinquents had wiped

* Rupto Imperio, congressus cum hoste funditur, quod graviter *Corbulo* accepit, increpitumque *Pactium*, & *Præfectos* militesque tendere omnes extra Vallum jussit. *Tacit. Annal.* 13. cap. 36.

† *Domitius Corbulo* in *Armeniâ* duas Alas & tres Cohortes quæ ad Castellum initio hostibus cesserant, extra Vallum jussit tendere donec assiduo labore & prosperis excursionibus redimerent ignominiam. *Frontin. Stratagem.* lib. 4. cap. 1.

Appii Claudii sententia Senatus eos qui à *Pyrrho* rege *Epirotarum* capti, & postea remissi erant, omnes extra Vallum jussit tendere, donec bina hostium spolia singuli referrent. *Frontin. eod.*

136 Of the Roman

off their Shame by some brave Action against the Enemy.

On some occasions they were utterly dismember'd from the Army, and sent to work in the Fortifications, or to † garrison Towns; and if in Winter-Quarters at the time the Offence was committed, they were condemned to pass the Season under * Huts or Tents in the Field, and not to build the same nearer the Garrison or any other

† Custodia castrorum non honoris sed oneris existimatur. *Stewechius, ex Diomede Grammatico, ad Veget. lib. 3. cap. 4.*

* P. Valerio Consuli Senatus præcepit exercitum ad Syrim victum ducere Serinum, ibique castra munire & hiemem sub tentoriis exigere. *Frontin. Stratagemat. lib. 4. cap. 1.*

Additum etiam virorumque ignominia est, NE IN OPPIDIS HYBERNARENT, neve Hybernâ propius ullam urbem decem millibus passuum ædificarent. *Liv. lib. 35.*

Town,

Military Punishments 137

Town, than ten thousand Paces : Which Punishment some think, was unknown before the *Romans* laid Siege to the City of the *Veii*, the Army having never before that time winter'd in the Field,

Again, Delinquents were, by way of Punishment, ordered to march among the Captives, with the Baggage, as Supernumeraries. Thus * *Julianus* punished some Horsemen of the *Tertiaci* for deserting the Legions, having first taken from them their Colours, and broke their Spears : For tho' such as were really sick or disabled, might, without Imputation of Infamy, go along with the Baggage ; yet those

* *Ammianus Marcellinus*, lib. 25, cap. 1.

T

that

138 Of the Roman

that pretended Disability, to avoid the Fatigue and Duties of honest Soldiers, were dismiss'd the Service, without Pass or Discharge; by which means they were rendred infamous; the * Law presuming in that case they were sent away for some dishonourable Action.

It was also a Punishment of Shame to be degraded, which they called *Militiæ mutatio*. This was, when a Trooper had his Horse taken from him, being compelled to serve on Foot; or, when a Foot-Soldier from a superior Station was reduced to an inferior: For, as they had several Degrees

* Et si sine ignominia mentione missi sunt, nihilominus ignominia missi intelliguntur. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 13. § 3.*

Military Punishments. 139

of Promotion ; so every one was preferred or degraded , according to his Behaviour : The *lowest* were the *Tyrones* and *Caligati*, who were raw new-listed Centinels , and subject to many arbitrary private Services imposed by their Officers, till time or some brave Exploit redeemed them from that Drudgery, and put them into the List of the *Beneficiarii* or *Munifices*, as they were anciently called. This Degradation was either to the very next step below, or to the bottom of all ; as, suppose a Tribune was to be *gradu dejectus* ; this reduc'd him to be * *Primicerius*, or First Centurion : If

* *Primicerium* vocârunt, primum seu priorem locum tinentem. Divus Augustinus sanctum Stephanum *Primicerium Martyrum* nuncupavit. *Stewechius ad Vegetium, lib. 2. cap. 21.*

140 Of the Roman

he were to be *datus in deterio-
rem militiam*, then he was sunk to the
Condition of a private Soldier. But
when we read of any one simply *gradu
dejectus*, it is to be understood of
One Degree only: And this is the
Disgrace which by * *Modestinus* is
called *Gradu militie dejici*, and *Gradu
pelli*, and by † *Callistratus*, *In deterio-
rem militiam dari*. From which kind
of Degradation, *Militie mutatio* seems
in some measure to differ, by
these Passages in the *Digest*; ‡ *Qui
in pace deseruit, Eques gradu pellendus
est, & Pedes militiam mutat*: For here

* *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 5. & 9.*

† *Digest. lib. 48. Tit. 3. De Custod. Reorum, Leg. 12.*

‡ *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 5. §. 1.*

the

Military Punishments. 141

the Horseman is to be reduced to serve on Foot, and the Foot-Soldier to serve among the Slingers; of which there are many Examples in * History. But *Militiâ rejici* was different from all these. This was, When a Soldier had his Pay taken from him, and was adjudged incapable of ever serving in the Army; A † Punishment assigned for those that wounded their Fellow-Soldiers by slinging of Stones. In which sense, the Law *Qui aliena arma subripuit, gradu militiæ pellendus*

* *Valer. Max. lib. 2. cap. 17.*

Equites quartæ sagittariorum cohortis omnes contrusit ad infimum militiæ gradum. *Ammianus Marcellinus, lib. 29.*

† Si quis commilitonem vulneraverit siquidem lapide, militiâ rejicitur. *Digest. Lib. 49. Tit. 16. De Re Militari, Leg. 5. §. 1.*

Digest. cod. Leg. 3. §. 14.

est,

142 Of the Roman

est, is likewise to be taken; where *Pellendus* goes farther than removing the Offender from one degree to another, and signifies the banishing of him for ever out of the Service. To this Punishment of *Degradation*, there was sometimes the Additional Disgrace of having their *Spears* first * broken, or taken from them; A Mark, says † *Festus*, of the greatest Infamy, and generally set upon Cowardly Slothful Fellows: For the *Spear* was an Emblem of ‡ *Fortitude*, as well as *Command*; and therefore the

* *Ammianus Marcellinus*, lib. 25. cap. 1.

† *Festus in verba CENSIO.*

‡ *Budens.*

Military Punishments. 143

Romans added * *Spears* to all the Statues of their *Emperours* and Great Men. This taking away of the Spear, is the *Censio Hastaria* so often met with in the Roman History.

* G. Cuperus *Apoth. Rom.* p. 22. & 23.

CHAP. XVII.

THE Roman Soldiers, in the
fancy of that time, had no
Punishment, but a loss of
the Publick, Every man imposed
himself in the War, and
the Publick, in the Year 350, or
Charge, till the Senate decreed,
thereabouts, when the Senate decreed,
CHAP. XVII. should be paid by the
* Go-



CHAP. XVII.

THE *Roman* Soldiers, in the In-
 fancy of that State, had no
 Pay or Subsistence allow'd them by
 the Publick; Every Man supported
 himself in the War, and carried on
 the Duties of it at his own private
 Charge, till the Year 350, *ab U. C.* or
 thereabouts; when the *Senate* decreed,
 that the *Army* should be paid by the
 * Go-

Military Punishments. 145

* *Government*, that is, the *Infantry*; For the *Cavalry*, as some think, had no Pay given them till three Years after †. The Quantity, according to *Polybius*, was a third Part of a *Drachma*, or seven Pence Halfpeny a day for every Foot-Soldier; which the same Author in another Place makes equivalent to four *Asses*; To a *Centurion* twice as much, and to a *Horseman* or *Trooper* a *Drachma* or Roman *Denarius*, then current for Twelve *Asses*; which Pay continued, probably, in those Proportions till *Julius Caesar* doubled it

* Anno Urbis conditæ 349, decrevit Senatus, ut stipendium Miles de publico acciperet, cum ante id tempus de suo quisque functus eo munere esset. *Liv. lib. 4.*

† See Sir H. Savill's *Notes upon Tacitus.*

146 Of the Roman

to the * *Legions* for ever; and after him, *Augustus* raised the Foot-Soldiers Pay to Ten *Asses*, and at length to a whole *Denarius*. When this Pay or Stipend was stopp'd for any shameful Action, it was called † *Æs Resignatum*; but when it was wholly taken away for a Crime committed, then it was called *Æs dirutum*; and such as were punished after that manner, were said to be † *Ære diruti*, and *Infrequentes*, as if they had been respited upon the *Musters-Rolls*; in which latter case, the Money returned to the Exchequer.

* *Legionibus stipendium in perpetuum duplicavit. Sueton. in Julio, cap. 26.*

† *Festus in V. Resignatum.*

VARRO d. Vir. P. R. l. 3. in fragm.

† Thus

Military Punishments. 147

* Thus, if a Soldier happen'd to be taken by the Enemy, and afterwards came back to the Army, he had no right to demand his Stipend for the time of his Absence, unless it appeared his Captivity was no ways owing to his own ill Conduct: For then it could not be refused. Sometimes their Pay, by way of Punishment, was reduced to one half; or, when they had compleated their Term of Military Service, they were put back so many

* Stipendia & Donativa temporis quo apud hostes fuisse te dicis, restitui tibi postliminio regresso restituitoque jure non desideras. *Cod. lib. 12. Tit. 36. De Re Milit. Leg. 1.*

Sed si ex improvise dum iter quis facit capitur ab hostibus, inspecto vite ejus præcedentis actu venia ei dabitur. *Dig. lib. 49. Tit. 16. De Re Militari, Leg. 3. §. 12.*

148 Of the Roman

Years, and forced to serve them over again †; as the Senate punished the Remains of the Army after the Battle of Cannæ.

Over and above their Pay, they had
 * *Wheat distributed among them, and that long before they began to receive Wages: Sometimes they had Bacon, Pork, Salt and Pulse given them. This Allowance of Wheat, &c. was for a Month, or a certain Number of Days, according to the time the Expedition was like to continue. Thus † Livy: The Army was brought back to Rome,*

† Mitterentur in Siciliam ad Cannensis exercitus reliquias cui militum generi non priusquam pulsus Italiâ hostis finitum tempus stipendiorum erat. *Liv. lib. 33.*

* *Scælius ad Hyginum & Polybium, cap. 7.*

‡ *Exercitum Romam deductum, stipendium & trium mensium frumentum accepisse. Liv. lib. 8. in princip.*

having

Military Punishments. 149

having received a Years Pay, and Wheat for three Months. But such as were convicted of Crimes, or had failed in their Duty, instead of Wheat, had * Barley given them, as if they were fitter to be reckoned among Beasts than Men ; In which manner Marcellus order'd those Cohorts to be punished, that had lost their Ensigns in the Battel with Hannibal near Canusium. And Augustus (as hath been already observed) set this Mark of Disgrace upon some Legions that had given ground to the Enemy. † Vegetius says, it was a

* Livius, lib. 27.

Suetonius, cap. 24. in Aug.

† Ita autem severè apud majores exercitii disciplina servata est, ut & doctores armorum duplicibus remunerentur annonis & milites qui parùm in illà prolusione profecerant, pro frumento hordeum cogerentur accipere. Veget. lib. 1. cap. 13.

150 Of the Roman

Punishment inflicted upon such as neglected, or did not improve in their Military Exercises. It was also appointed for those that escaped with Life upon Decimation.

This *stipendii privatio*, stopping or suspending of Pay, was different from the Punishment called *Pena pecuniaria*, or, as it is frequently and plainly in the Theodosian Code, *Condemnatio*, whereby the Offenders did not only lose all their Pay, but whatever they were worth besides. There is a Law in that Code, which enacts, * *That if a Soldier be twice convicted of stragling about the Countrey, or absenting without*

* Cod. Theod. De Re Militari, Leg. 21.

leave

Military Punishments. 151

leave from the Company he belongs to, he shall forfeit all he hath, * In the Free State, such as refused to appear at the General Muster, were punish'd with the Loss of all their Goods. But this *Mult* or *Pecuniary Punishment* grew more Common in *latter Times*, as appears by several of the *Emperours Constitutions*. There is One against Petitioners for Leave to hold Two Employments, † condemning them to pay ten Pounds of Gold; and Another in favour of the Officers appointed to gather Corn and Money from the Provinces for

* Eos qui non parebant, in bonis damno afficiebant.
Dion. Halicarn. lib. 8. interprete Lipsio.

† L. 5. Cod. Qui milit. poss.

152 *Of the Roman*

the Use of the Army, whereby *such* as disturb or hinder them in their Collections, are condemned to pay a hundred Pounds of Gold.

To conclude : These were the most usual Roman Military Punishments, for which we have any good Historical Authority. * *Stewechius* indeed, puts the Refusal of Burial in the Catalogue ; because those Soldiers who rebelled and seiz'd upon † *Rhegium*, were, after the taking of that Place, sentenced to death, and Orders given that no Man should bury or bewail them. But this uncommon Resentment was owing to the extraordinary nature of their

* *Ad Veget. lib. 3. cap. 4.*

† *Valer. Max. lib. 2. cap. 7.*

Military Punishments. 153

Offence. They suffered as *Rebels* and *Traytors*, not as *Soldiers*, whose Bodies after undergoing the Severity of the Law, were never refused *Burial*. * *Herman Hugo* likewise mentions the *Pugillarium Traditionem*, as a *Roman Military Punishment* in the *Horse-Service*. This was, the Delivery of a *Pocket-Book* or *Paper*, wherein the Person's Faults were set down, to let him see his Actions were taken notice of and disliked by his Superiours. *Sichterman* blames *Hugo* for calling this a *Military Punishment*, and says, he misunderstands *Suetonius's* Words, and that *Augustus*, who took this method to admonish the *Roman Knights*, did not apply it to them as *military Men*, but as *Brokers* and *Usurers*. But if *Suetonius* be allow'd

* *De Milit. Equestr. lib. 5.*

154 Of the Roman

to speak for himself, it will appear, not *Hugo*, but *Sichterman* is mistaken in this Particular. The Author's Words are, * *Lenissimum genus admonitionis fuit traditio coram pugillarium*. And then he goes on, *Notavitque aliquos quod pecunias, &c.* From whence 'tis plain, the *Traditio pugillarium* and the *Notatio* were distinct Animadversions, and that the latter only related to those who were accused of borrowing Money at a low rate, and lending out the same at exorbitant Interest : So that both these Authors seem to be in an Errour ; *Hugo*, in applying the Emperours *Notatio* to the Roman Knights in their Military Capacity, and † *Sichterman*, in applying the *Pugillarium traditio* to them as Ufurers. Whether

* In *Vita Aug. cap. 39.*

† *Dissert. de Pen. Milit. ad fin.*

either,

Military Punishments. 155

either, considering all things, can, be properly called a *Military Punishment*, is left to the Determination of better Judges. * *Montfaucon* says, that *striking their Faces with Stones* was likewise a *Military Punishment* in use among the *Romans*; but does not tell us his Authority. And † *Livy* relates, that *Gracchus* made some of his Soldiers who had not behaved themselves with the same Bravery as the rest of the Army, take an Oath, *that they would not eat or drink in any Posture but standing, as long as they should continue in the Service.* But this one Example, in which there appears to be more of Humour than Reason, can't be thought sufficient to place it among the *Military Punishments.* I forbear mentioning several others of the same kind, that I may not seem rather to perplex than illustrate the Subject of this Treatise.

* *Antiq. lib. 4.* † *Lib. 24.*